

Donaher - Highly Confidential - Trade Secret

2

3 ALSO PRESENT:

SHELLEY SANDERS, Videographer

4

PHYLLIS Y. HENDERSON, Legal Assistant

5

Wilmer, Cutler & Pickering

6

LINDSAY KING, Summer Associate

Hunton & Williams

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10:09:00 2 THE VIDEO OPERATOR: This is the

10:10:52 3 videotaped deposition of Denise Donaher, noticed

10:10:58 4 by Defendant, in case number 760CL94X 00816-00,

10:10:58 5 entitled Philip Morris versus ABC.

10:11:02 6 My name is Shelley Sanders and I am

10:11:04 7 the certified legal video specialist operating

10:11:06 8 the videotape equipment for this deposition. I'm

10:11:10 9 employed by Action Legal Video of New York City,

10:11:12 10 New York.

10:11:14 11 This deposition is being taken on

10:11:16 12 Wednesday, June 14th, 1995, at the offices of

10:11:26 13 McGuire, Woods, Battle & Boothe, located at 901

10:11:30 14 East Carey Street, Richmond, Virginia, at the

10:11:32 15 time indicated on the lower portion of the

10:11:36 16 television screen. The time on the screen is

10:11:38 17 10:11:39.

10:11:40 18 I will now ask counsel to please

10:11:42 19 identify themselves and indicate the parties they

10:11:46 20 represent. The court reporter before whom this

10:11:48 21 deposition is being taken will then identify

10:11:52 22 himself, his employer, and will administer the
10:11:54 23 oath to the witness.
10:11:54 24 MR. KILLORY: I'm Joseph E. Killory
10:11:58 25 from Wilmer, Cutler & Pickering, representing

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10:12:00 2 ABC.
10:12:00 3 MR. MURPHY: David Murphy from
10:12:02 4 Wachtell, Lipton, Rosen & Katz, representing
10:12:06 5 Philip Morris, plaintiffs, and Ms. Donaher.
6 THE COURT REPORTER: My name is Lee
7 Bursten. I'm from Manhattan Reporting Corp. in
8 New York City.
9 D E N I S E R. D O N A H E R,
10 residing at [DELETED],
11 [DELETED], having been first
12 duly sworn by the Notary Public (Lee A. Bursten),
13 was examined and testified as follows:

Examination by Joseph Killory Esq.

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10:12:24 14 EXAMINATION BY MR. KILLORY:
10:12:24 15 Q. Ms. Donaher, could you give your full
10:12:28 16 name and address for the record, please?
10:12:32 17 A. Denise Renee Donaher,
10:12:34 18 [DELETE].
10:12:38 19 Q. As mentioned in the introductory
10:12:44 20 introductions, I am counsel for ABC, the
10:12:44 21 defendants in this lawsuit brought by Philip
10:12:48 22 Morris. And I'm here to take questions of you.

10:12:52 23 Have you ever had your deposition taken before?

10:12:54 24 A. No, I haven't.

10:12:56 25 Q. Have you ever signed an affidavit?

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10:12:56 2 A. No, I haven't.

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10:12:58 3 Q. Do you understand that the purpose of

10:13:02 4 the deposition is for me to ask you questions and

10:13:04 5 for you to answer to the best of your knowledge?

10:13:06 6 A. Yes, I do.

10:13:08 7 Q. If there is any question that I ask

10:13:08 8 that you don't understand in part or in whole,

10:13:12 9 please tell me and I will attempt to clarify the

10:13:14 10 question. Do you understand that?

10:13:16 11 A. Yes.

10:13:18 12 Q. Do you understand that the oath that

10:13:20 13 you took at the outset of this deposition is just

10:13:22 14 as though you were taking the stand in a trial,

10:13:26 15 that you're sworn to tell the truth to the best

10:13:28 16 of your ability?

10:13:30 17 A. Yes, I do.

10:13:30 18 Q. Did you review any documents in

10:13:34 19 preparation for this deposition?

10:13:36 20 A. No, I didn't.

10:13:36 21 Q. In preparing for this deposition, did

10:13:38 22 you meet with lawyers for Philip Morris?

10:13:40 23 A. Yes, I did.

10:13:40 24 Q. When did you meet with them?
10:13:44 25 A. On Friday the 9th of June; Monday the

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10:13:48 2 12th; and Tuesday the 13th.

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10:13:50 3 Q. And for how long on each day,
10:13:52 4 approximately?

10:13:52 5 A. Approximately six hours.

10:13:56 6 Q. Which lawyers did you meet with?

10:13:58 7 A. Brian Otero and David Murphy.

10:14:00 8 Q. Did you review any documents while
10:14:02 9 you were meeting with the lawyers?

10:14:02 10 A. No, I didn't.

10:14:04 11 Q. Have you looked at any previous
10:14:06 12 deposition transcripts or videotapes in this
10:14:08 13 proceeding?

10:14:08 14 A. No, I haven't.

10:14:10 15 Q. Have you consulted with any other
10:14:12 16 counsel such as personal counsel in connection
10:14:16 17 with this deposition?

10:14:16 18 A. No.

10:14:18 19 Q. Prior to your consultations with
10:14:20 20 counsel to prepare for this deposition, had you
10:14:24 21 been contacted by any Philip Morris lawyer in
10:14:28 22 connection with this litigation?

10:14:30 23 A. No, other than scheduling.

10:14:36 24 Q. Were you ever shown a document,
10:14:38 25 whether in draft or final form, labeled

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10:14:40 2 "Interrogatories" or "Interrogatory responses"?

10:14:42 3 A. No.

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10:14:42 4 Q. Were you ever asked to provide

10:14:44 5 information to Philip Morris counsel for

10:14:46 6 inclusion in any interrogatory responses?

10:14:48 7 A. No, I haven't.

10:14:50 8 Q. Are you aware that you are listed as

10:14:56 9 one of the Philip Morris employees who was listed

10:14:58 10 as having been consulted in preparation of

10:15:00 11 interrogatory responses by Philip Morris in this

10:15:00 12 case?

10:15:02 13 MR. MURPHY: Objection to form.

10:15:02 14 A. No.

10:15:06 15 Q. I didn't hear your answer, I'm

10:15:08 16 sorry.

10:15:08 17 A. I said no, I wasn't.

10:15:10 18 Q. Have you communicated either orally

10:15:12 19 or in writing with anyone else, I'm now excepting

10:15:16 20 Philip Morris lawyers, anyone else about this

10:15:20 21 deposition?

10:15:22 22 A. My family members for scheduling

10:15:28 23 purposes; bosses; employees that work for me, to

10:15:28 24 let them know about scheduling conflicts.

10:15:32 25 Q. Apart from discussions about

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10:15:34 2 scheduling, have you discussed the subject matter

10:15:40 3 of the deposition with anyone?

10:15:42 4 MR. MURPHY: Again, excluding

10:15:42 5 conversations with counsel.

10:15:46 6 MR. KILLORY: Of course.

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10:15:46 7 Q. It's a given, excluding the

10:15:48 8 conversations you had with Mr. Murphy or

10:15:52 9 Mr. Otero or other Philip Morris counsel, have

10:15:54 10 you had conversations about the likely subject

10:15:56 11 matter of this deposition?

10:15:56 12 A. No, I haven't.

10:15:58 13 Q. Have you had conversations with

10:16:00 14 anyone, again excluding conversations with

10:16:00 15 counsel, regarding why you were noticed to be

10:16:04 16 deposed?

10:16:04 17 A. No.

10:16:06 18 Q. Do you have an office at the Philip

10:16:08 19 Morris Park 500 facility?

10:16:10 20 A. Yes, I do.

10:16:12 21 Q. Do you have any offices at any other

10:16:16 22 Philip Morris facility?

10:16:16 23 A. No.

10:16:20 24 Q. In the course of your work for Philip

10:16:20 25 Morris, do you retain any documents that you

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10:16:22 2 receive?

10:16:24 3 MR. MURPHY: I object to the form of

10:16:24 4 the question.

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10:16:28 5 Q. You can answer, if you understand.

10:16:32 6 A. I retain all sorts of documents.

10:16:34 7 Q. And where do you keep those

10:16:34 8 documents?

10:16:36 9 A. The ones that I have in possession

10:16:38 10 are in my office.

10:16:40 11 Q. So you maintain some personal files

10:16:42 12 in your office?

10:16:42 13 A. Yes.

10:16:42 14 Q. Are there other documents that you

10:16:44 15 send to a central file system at Park 500?

10:16:48 16 A. No.

10:16:50 17 Q. Have any lawyers for Philip Morris

10:16:52 18 searched your files in connection with this

10:16:54 19 litigation?

10:16:56 20 A. I don't know what the lawyers have

10:16:58 21 done with my files. I submitted files as

10:17:00 22 requested.

10:17:02 23 Q. When were you requested to submit

10:17:02 24 files?

10:17:06 25 MR. MURPHY: Objection. Exclude from

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10:17:12 2 your answer any conversations with counsel. You
10:17:12 3 can answer the question subject to that
10:17:14 4 exclusion.

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10:17:16 5 Q. I think the only question was when.

10:17:24 6 A. Approximately March of 1994. And
10:17:30 7 then again -- I moved offices, and then again in
10:17:30 8 November of 1994.

10:17:34 9 Q. Did you review any documents in the
10:17:36 10 course of searching your files?

10:17:38 11 MR. MURPHY: Objection to form.

10:17:42 12 A. I put them in a box.

10:17:44 13 Q. Do you know which files you put in a
10:17:44 14 box?

10:17:46 15 A. Basically everything in my office.

10:17:50 16 Q. What is your educational background?

10:17:52 17 A. I have a bachelors degree in chemical
10:17:54 18 engineering.

10:17:56 19 Q. From where?

10:17:58 20 A. Clarkson University.

10:18:00 21 Q. And when did you receive that
10:18:02 22 degree?

10:18:02 23 A. May 1983.

10:18:14 24 Q. What was your first full time
10:18:16 25 position after getting your degree from

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10:18:18 2 Clarkson?
10:18:20 3 A. Associate engineer, Philip Morris.
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10:18:28 4 Q. So following graduation you
10:18:30 5 immediately came to work for Philip Morris?
10:18:32 6 MR. MURPHY: Objection to form.
10:18:36 7 A. Yes, I did.
10:18:38 8 Q. Do you have any other formal training
10:18:40 9 beyond your bachelors in any area?
10:18:42 10 A. No, I don't.
10:18:46 11 Q. What's your current position with
10:18:48 12 Philip Morris?
10:18:48 13 A. My title is total quality
10:18:52 14 superintendent.
10:18:58 15 Q. And when did you assume that
10:19:00 16 position?
10:19:00 17 A. November 1994.
10:19:10 18 Q. To whom do you report?
10:19:14 19 MR. MURPHY: Objection to form. Are
10:19:16 20 you asking her to whom she reported in November
10:19:18 21 1994?
10:19:20 22 MR. KILLORY: Now.
10:19:22 23 Q. Starting November 1994. To whom did
10:19:24 24 you report then?
10:19:26 25 MR. MURPHY: November 1994?

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10:19:30 2 Q. Is that the date you assumed the

10:19:30 3 position?

10:19:32 4 A. Yes, it is.

10:19:34 5 MR. MURPHY: You can answer the

10:19:36 6 question as to to whom you reported. But I would

10:19:38 7 just caution Mr. Killory that there is a

10:19:40 8 discovery cutoff in this case of March 24, 1994.

10:19:44 9 In the interests of getting complete

10:19:50 10 employment history of this witness, I will not

10:19:50 11 block the examination, but I just want to be

10:19:52 12 clear that we are inquiring into facts that fall

10:19:58 13 after the discovery cutoff.

10:20:00 14 MR. KILLORY: I'm just trying to find

10:20:00 15 out her full employment history.

10:20:04 16 Q. To whom did you report in November

10:20:04 17 1994?

10:20:06 18 A. Gordon McConnell.

10:20:08 19 Q. Do you still report to Gordon

10:20:10 20 McConnell?

10:20:10 21 A. Yes, I do.

10:20:12 22 Q. And when I say "report," that's a

10:20:16 23 direct report, it's not through somebody else?

10:20:18 24 A. That's correct.

10:20:20 25 Q. What are your responsibilities as

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10:20:22 2 total quality superintendent?

10:20:24 3 MR. MURPHY: Same objection. You can

10:20:26 4 answer the question.

10:20:28 5 A. I primarily coach and train employees
10:20:34 6 at the plant on the methods and tools of our
10:20:36 7 total quality management system at the plant;
10:20:46 8 conduct classes.

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10:20:46 9 Q. Does that encompass all parts of the
10:20:48 10 Park 500 manufacturing process?

10:20:50 11 MR. MURPHY: Again, same objection.
10:20:52 12 You can answer the question.

10:20:54 13 A. I'm coaching employees that work in
10:20:58 14 the manufacturing process as well as supervisory
10:21:02 15 and management.

10:21:04 16 Q. When you first came to work for
10:21:06 17 Philip Morris in 1983 -- is that correct?

10:21:12 18 A. Yes.

10:21:12 19 Q. What was your position at that time?

10:21:14 20 A. Associate engineer.

10:21:16 21 Q. And what were your responsibilities
10:21:16 22 in that position?

10:21:20 23 A. I was a process development engineer
10:21:26 24 working on -- I worked on a stem shredding
10:21:38 25 developmental process to try to look at ways to

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10:21:40 2 include stem in.

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10:21:48 3 Q. I'm sorry, ways to include stem in --

10:21:52 4 A. An alternate way to use tobacco
10:21:52 5 stems.

10:22:02 6 Q. How long did you work on that
10:22:04 7 project?
10:22:08 8 A. Approximately six months.
10:22:12 9 Q. So that would take you through what
10:22:14 10 date?
10:22:18 11 A. December, January time frame.
10:22:26 12 December of 1983.
10:22:26 13 Q. December of '83 or January of '84?
10:22:28 14 A. Yes.
10:22:34 15 Q. And in December of '83 or January of
10:22:34 16 '84, did you assume a new position?
10:22:40 17 A. No, I was in the same position.
10:22:42 18 Q. Did you have a new project?
10:22:46 19 A. I worked on several projects
10:22:50 20 concurrently. To the best of my recollection, I
10:22:56 21 shifted gears in terms of what the emphasis was.
10:22:58 22 But I don't think I can say that project had a
10:23:02 23 definite end date.
10:23:04 24 Q. So it continued perhaps in some form
10:23:06 25 after that December/January time frame?

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10:23:10 2 A. Yes.
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10:23:12 3 Q. What was the next position you had at
10:23:16 4 Philip Morris?
10:23:18 5 A. The next position was in December of
10:23:22 6 1985.
10:23:24 7 Q. And what was that position?

10:23:30 8 A. A quality analyst.
10:23:34 9 Q. Are both of these first two positions
10:23:38 10 you've described at Park 500?
10:23:44 11 A. No, they weren't.
10:23:44 12 Q. Where were you in the associate
10:23:46 13 engineer position?
10:23:46 14 A. R&D.
10:23:48 15 Q. Can you explain to me, is there -- is
10:23:54 16 Park 500 separate from R&D?
10:23:56 17 MR. MURPHY: Objection to form.
10:24:00 18 A. Yes, it's completely separate.
10:24:02 19 Q. And how about as a quality analyst?
10:24:08 20 Were you in R&D or at Park 500?
10:24:08 21 MR. MURPHY: Objection to form.
10:24:10 22 A. I was in neither of those places.
10:24:12 23 Q. Where were you?
10:24:14 24 A. I was at 20th Street.
10:24:20 25 Q. And what work is done at the 20th

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10:24:20 2 Street facility?
10:24:22 3 MR. MURPHY: Objection. Are you
10:24:26 4 asking the witness what work was done at the 20th
10:24:28 5 Street facility at the time she was there?
10:24:32 6 MR. KILLORY: That's right.
10:24:32 7 MR. MURPHY: Or are you asking her --
10:24:34 8 MR. KILLORY: That's right.

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10:24:34 9 Q. At the time you were a quality
10:24:34 10 analyst in December of '85, what work was done at
10:24:38 11 the 20th Street facility?
10:24:40 12 MR. MURPHY: You can answer that
10:24:40 13 question.
10:24:40 14 A. The preparation of blended strip for
10:24:44 15 export.
10:24:46 16 Q. The 20th Street facility is closed
10:24:50 17 now, correct?
10:24:50 18 A. That's correct.
10:24:50 19 Q. What was your -- how long did you
10:24:54 20 stay in that position as quality analyst at the
10:24:56 21 20th Street facility?
10:24:56 22 A. Until July of 1986.
10:25:04 23 Q. And at that time you assumed what
10:25:06 24 position?
10:25:12 25 A. I can't recall exactly what my title

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10:25:14 2 was, but I was some kind of section supervisor,
10:25:18 3 tobacco lot analysis.
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10:25:24 4 Q. At what facility?
10:25:28 5 A. The tobacco quality audit facility,
10:25:28 6 known as TQAF.
10:25:32 7 Q. And where is that located?
10:25:34 8 A. It's at Everett Street.
10:25:40 9 Q. Can you briefly describe for me what
10:25:42 10 your duties were as a section supervisor?

10:25:44 11 MR. MURPHY: Objection to form.
10:25:50 12 A. I supervised a laboratory operation.
10:25:58 13 Q. And what did the analysis of the
10:25:58 14 tobacco lots involve?
10:26:00 15 MR. MURPHY: Objection to form.
10:26:06 16 A. It involved a significant number of
10:26:18 17 tests, physical and chemical, in cigarettes of
10:26:18 18 tobacco -- and tobacco.
10:26:22 19 Q. Were you testing tobacco in its raw
10:26:22 20 form?
10:26:28 21 A. What do you mean by "raw form"?
10:26:30 22 Q. When you mentioned cigarettes and
10:26:32 23 tobacco in your last answer, I was attempting to
10:26:34 24 clarify whether you were testing finished
10:26:38 25 cigarettes or tobacco leaf.

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10:26:38 2 MR. MURPHY: Objection to form.
10:26:42 3 A. We were not testing tobacco leaf in
10:26:42 4 the tobacco lot analysis.
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10:26:44 5 Q. Were you testing finished
10:26:46 6 cigarettes?
10:26:46 7 A. Yes, we were.
10:26:50 8 Q. What were you testing for?
10:26:50 9 MR. MURPHY: Objection to form.
10:26:52 10 A. Routine smoke analysis was part of
10:26:58 11 the program. But it was not conducted at that

10:27:02 12 facility.

10:27:08 13 Q. So -- I don't understand. Your

10:27:10 14 duties encompassed routine smoke analysis?

10:27:14 15 A. The tobacco lot -- some of the

10:27:14 16 tobacco lot analysis tests were routine smoke

10:27:20 17 analysis that we coordinated but was not

10:27:22 18 physically tested at that building.

10:27:26 19 Q. Where was it physically tested?

10:27:28 20 A. At the product audit smoking labs.

10:27:32 21 Q. And where are those located?

10:27:34 22 A. At the operations center.

10:27:48 23 Q. As part of that work, did you test

10:27:52 24 blend components in cigarettes?

10:27:54 25 MR. MURPHY: Objection to form. I'm

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10:28:00 2 not sure I understand the question, Ted.

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10:28:00 3 Q. In your role as a section supervisor

10:28:02 4 overseeing tobacco lot analysis, did you oversee

10:28:08 5 testing for -- of components in tobacco?

10:28:16 6 A. In what form are you speaking of?

10:28:20 7 Q. In either the finished -- I'm trying

10:28:22 8 to understand what you were doing there, and I

10:28:24 9 had asked before about tobacco versus

10:28:26 10 cigarettes. As a follow-up question to my prior

10:28:30 11 one, it is simply, what components were you

10:28:34 12 testing for in the tobacco when testing was

10:28:36 13 done?

10:28:36 14 MR. MURPHY: Objection to form. You
10:28:38 15 can answer the question.
10:28:38 16 A. We were testing tobacco filler prior
10:28:44 17 to the manufacture of the cigarettes. Not
10:28:48 18 manufacture, but the cigarettes that were made
10:28:52 19 for testing.
10:28:58 20 Q. And what ingredients were you testing
10:28:58 21 for?
10:28:58 22 MR. MURPHY: Objection to form. You
10:29:02 23 can answer, if you understand the question.
10:29:02 24 A. My understanding was we were not
10:29:06 25 testing for any sort of ingredients.

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10:29:08 2 Q. What tests were you running?
10:29:10 3 MR. MURPHY: Objection to form.
10:29:12 4 Vague and ambiguous. You can answer if you
10:29:14 5 understand.
10:29:16 6 A. Can you try to rephrase the
10:29:18 7 question?
10:29:18 8 Q. First I asked whether you were
10:29:20 9 testing for ingredients. And you said that you
10:29:24 10 didn't know what ingredients; is that correct?
10:29:24 11 A. My understanding wasn't --
10:29:28 12 MR. MURPHY: Ted -- just a minute.
10:29:30 13 It might be helpful if you tell her what you mean
10:29:32 14 by the word "ingredients."

10:29:34 15 Q. We moved on to what you were testing
10:29:36 16 for. That was vague and ambiguous. I'm now
10:29:38 17 trying to determine what you were testing for.
10:29:40 18 MR. MURPHY: By "ingredients" you
10:29:42 19 mean additives?
10:29:44 20 Q. What did you run tests to determine?
10:29:44 21 You ran tests of tobacco; correct?
10:29:46 22 A. Yes, we did.
10:29:46 23 MR. MURPHY: Objection to form.
10:29:48 24 Q. What tests did you run?
10:29:58 25 A. Are you asking on tests on

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1 Donaher - Highly Confidential - Trade Secret
10:30:00 2 cigarettes, are you asking tests on tobacco
10:30:02 3 filler? I don't know --
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10:30:02 4 Q. I'm asking for both. Let's start
10:30:06 5 with filler. What tests did you run on tobacco
10:30:08 6 filler?
10:30:12 7 A. We ran sieve size.
10:30:14 8 Q. What is that test?
10:30:14 9 A. How large the particles are, the
10:30:16 10 length of the filler.
10:30:20 11 Q. Why did you run those tests?
10:30:26 12 A. In order to see the differences
10:30:26 13 between different tobacco types and be able to
10:30:30 14 have some idea how it would perform in a
10:30:34 15 cigarette.
10:30:34 16 Q. Did your tests ever show any

10:30:38 17 performance difference based on sieve size?
10:30:40 18 MR. MURPHY: Objection to form. You
10:30:42 19 can answer.
10:30:44 20 A. We measured the sieve size, and yes,
10:30:48 21 there are sieve size differences between
10:30:50 22 different tobacco types.
10:30:50 23 Q. My question was, did you ever come to
10:30:54 24 any conclusions as to the performance -- strike
10:31:00 25 that.

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10:31:02 2 The previous answer, when I asked you
10:31:04 3 why did you run the tests, you said in order to
10:31:06 4 see the differences between different tobacco
10:31:08 5 types and be able to have some idea how it would
10:31:12 6 perform in a cigarette. And my question is, did
10:31:14 7 you ever get any results as to how that would
10:31:18 8 perform in a cigarette, how the sieve size made a
10:31:20 9 difference?

10:31:20 10 MR. MURPHY: Objection to form. Lack
10:31:20 11 of foundation. Vague and ambiguous. You can
10:31:24 12 answer the question. It might help if we simply
10:31:28 13 define what we mean by "performance."

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10:31:32 14 Q. What did you mean by "perform" in
10:31:34 15 your answer?

10:31:36 16 A. Our role in that laboratory was to
10:31:38 17 conduct the measurements and provide the data.

10:31:40 18 We were --
10:31:42 19 Q. Besides data as to the differing
10:31:46 20 lengths of the filler, did you provide any other
10:31:48 21 data as a result of those tests?
10:31:50 22 A. Yes, we did.
10:31:50 23 Q. What data?
10:31:54 24 A. We test for filling power, which is
10:32:00 25 called cylinder volume. We tested equillibrated

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10:32:10 2 moisture. We tested elemental compounds such as
10:32:22 3 calcium, potassium, silicon, magnesium. I can't
10:32:32 4 recall the rest of them.
Page: 24
10:32:50 5 Q. Any other tests of tobacco filler
10:32:52 6 that you recall being made?
10:32:54 7 A. We tested some routine type of
10:32:56 8 chemical analysis such as sugars, alkaloids,
10:33:06 9 nitrates, ammonia, total nitrogen. That's all I
10:33:24 10 can recall at the moment.
10:33:24 11 Q. For sugars, alkaloids, nitrates,
10:33:28 12 total nitrogen, would there be separate tests for
10:33:30 13 each of those elements or would that be part of
10:33:34 14 one testing for the tobacco filler?
10:33:36 15 MR. MURPHY: I object to the form of
10:33:38 16 the question. You can answer.
10:33:40 17 A. The instrument that's used is the
10:33:44 18 four channel instrument that can analyze all --
10:33:48 19 sugars, alkaloids, nitrates and ammonia at one

10:33:54 20 time.

10:33:54 21 Q. Do you know why you were testing for

10:33:56 22 those components?

10:34:02 23 A. All the tests that we were performing

10:34:04 24 in that laboratory were to provide a general

10:34:10 25 picture of information about different tobacco

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10:34:14 2 types.

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10:34:24 3 Q. Did you do any testing for nicotine?

10:34:28 4 A. No.

10:34:30 5 Q. What do you understand to be the

10:34:30 6 makeup of alkaloids?

10:34:36 7 A. I understand that there's a number of

10:34:38 8 types of alkaloids. Nicotine is one type.

10:34:40 9 Q. What are the other types besides

10:34:44 10 nicotine?

10:34:44 11 MR. MURPHY: Objection to form.

10:34:48 12 A. I don't know their names.

10:34:50 13 MR. MURPHY: Denise, it's important,

10:34:54 14 after Ted asks a question, for you to give me a

10:34:58 15 second to object if I do have an objection. So I

10:35:00 16 just ask you to give me a second or two after the

10:35:04 17 questions so that if there is an objection I can

10:35:06 18 put it on the record.

10:35:08 19 Q. Do you have any understanding from

10:35:08 20 your work roughly what percentage of alkaloids

10:35:12 21 are nicotine?
10:35:14 22 A. No.
10:35:16 23 MR. MURPHY: Objection.
10:35:24 24 Q. Any other tests that you can recall
10:35:28 25 running on tobacco filler?

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1 Donaher - Highly Confidential - Trade Secret
10:35:28 2 MR. MURPHY: Objection to form. What
10:35:32 3 types of tests?
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10:35:36 4 Q. Any other types in addition to the
10:35:36 5 ones you've described so far.
10:35:42 6 MR. MURPHY: Is there a time frame to
10:35:44 7 this question?
10:35:46 8 Q. The same time you were in the
10:35:48 9 position we've been talking about for the last
10:35:48 10 ten minutes.
10:35:48 11 MR. MURPHY: Okay. You can answer
10:35:50 12 the question.
10:35:52 13 A. I can't think of any others at this
10:35:54 14 time.
10:35:54 15 Q. Now, you mentioned that you also did
10:35:56 16 testing of cigarettes in addition to testing of
10:36:00 17 tobacco filler; is that correct?
10:36:04 18 A. We produced cigarettes that were sent
10:36:06 19 to the smoking lab for testing, that's correct.
10:36:10 20 Q. Explain to me what you mean, you
10:36:12 21 produced cigarettes.
10:36:14 22 A. That in producing or in sampling the

10:36:20 23 different types of tobaccos, we produced cut
10:36:24 24 filler, and we produced cigarettes in a small
10:36:30 25 cigarette maker at R&D, so that the

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10:36:32 2 characteristics of the particular types of
10:36:36 3 tobacco could be tested.
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10:36:40 4 Q. So these would be cigarettes with
10:36:42 5 different component blends?
10:36:44 6 MR. MURPHY: Objection to form.
10:36:50 7 A. I'm not sure what you're asking.
10:36:50 8 Q. When you essentially manufactured on
10:36:54 9 an R&D basis test cigarettes -- is that correct?
10:37:00 10 A. Yes.
10:37:00 11 Q. Were you part of R&D in this position
10:37:04 12 that we've been discussing?
10:37:06 13 MR. MURPHY: Objection to form.
10:37:08 14 Q. As section supervisor in the tobacco
10:37:10 15 lot analysis?
10:37:12 16 MR. MURPHY: You can answer.
10:37:16 17 A. No, I wasn't part of R&D. We were
10:37:16 18 just using R&D equipment.
10:37:18 19 Q. Have you ever formally been part of
10:37:20 20 the R&D operation of Philip Morris?
10:37:22 21 MR. MURPHY: Objection to form.
10:37:26 22 A. I think the first question -- my
10:37:32 23 first assignment was clearly in R&D, and that's

10:37:32 24 how I answered.

10:37:34 25 Q. Since then, have you been formally a

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10:37:36 2 part of R&D?

10:37:40 3 A. I returned to R&D in December of

10:37:44 4 1988.

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10:37:46 5 Q. Before we get there, let's continue

10:37:54 6 with the sampling, the testing of cigarettes as

10:37:56 7 contrasted with tobacco filler.

10:37:58 8 A. Okay.

10:38:00 9 Q. Your work entailed producing test

10:38:06 10 cigarettes. Did you or the people working under

10:38:08 11 you do any testing of those cigarettes?

10:38:10 12 MR. MURPHY: Objection to form. I

10:38:12 13 move to strike, except for the question itself.

10:38:16 14 Ask a proper question.

10:38:18 15 Q. Do you understand the question?

10:38:20 16 A. We did testing, people who worked for

10:38:24 17 me, on cigarette firmness and cigarette loose

10:38:28 18 ends.

10:38:54 19 Q. Did you do any testing of puff count

10:38:54 20 of cigarettes?

10:38:58 21 MR. MURPHY: Objection to form.

10:39:02 22 A. I didn't do any testing of the

10:39:04 23 cigarettes myself, no.

10:39:06 24 Q. Did the people working with you do

10:39:08 25 testing of puff count of cigarettes?

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10:39:10 2 A. I believe that was one of the

10:39:10 3 analysis in cigarettes, yes.

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10:39:14 4 Q. Did you ever see any of the results

10:39:14 5 of that analysis?

10:39:20 6 A. The database or paperwork came across

10:39:22 7 my desk, so I saw it, but it was just a piece of

10:39:26 8 paper with a number on it to me.

10:39:28 9 Q. So you have no understanding

10:39:28 10 whatsoever as to the results of that testing of

10:39:30 11 puff count?

10:39:32 12 MR. MURPHY: Objection to form.

10:39:36 13 Q. Is that correct?

10:39:36 14 A. Not that I can remember. Not that I

10:39:40 15 know of.

10:39:50 16 Q. Did you ever do any testing of

10:39:52 17 nicotine delivery qualities in different blends

10:39:54 18 of tobacco?

10:39:54 19 MR. MURPHY: Objection to form. Is

10:39:56 20 the time frame for this question the same time

10:39:56 21 frame that we've been discussing?

10:40:00 22 MR. KILLORY: I said "ever."

10:40:02 23 MR. MURPHY: You can answer the

10:40:02 24 question.

10:40:04 25 A. The cigarettes underwent a battery of

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10:40:08 2 normal smoking analyses. I don't recall all the
10:40:16 3 specifics.

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10:40:24 4 Q. My question was, did you ever do any
10:40:26 5 testing of nicotine delivery from various blends
10:40:32 6 of tobacco.

10:40:34 7 MR. MURPHY: Objection to form. You
10:40:34 8 can answer the question.

10:40:36 9 A. I didn't do any nicotine testing,
10:40:38 10 no.

10:41:00 11 Q. In your position as section
10:41:02 12 supervisor that we've been discussing, did you do
10:41:08 13 any other testing besides what you've described
10:41:10 14 to date so far on the cigarettes that you were
10:41:16 15 producing?

10:41:16 16 MR. MURPHY: Objection to form. You
10:41:18 17 can answer the question.

10:41:26 18 A. All I can recall is what I've already
10:41:26 19 said; that we did routine smoke analysis and some
10:41:36 20 physical measurements of loose ends and
10:41:36 21 firmness.

10:41:40 22 Q. You personally did no testing of
10:41:46 23 nicotine?

10:41:48 24 A. No.

10:41:48 25 MR. MURPHY: Objection to form.

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10:41:50 2 Asked and answered. You can answer again.

10:41:52 3 A. No, I didn't.

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10:41:52 4 Q. And I take from that answer that you

10:41:58 5 also include -- let me strike that.

10:42:00 6 MR. MURPHY: Good idea.

10:42:02 7 MR. KILLORY: Do you have any more

10:42:02 8 comments you would like to chip in along the

10:42:04 9 way?

10:42:06 10 MR. MURPHY: Ask a proper question.

10:42:10 11 Q. Did you ever do any testing of the

10:42:14 12 transfer of nicotine from cigarette rod to

10:42:16 13 cigarette smoke?

10:42:18 14 MR. MURPHY: Objection to form. You

10:42:20 15 can answer the question.

10:42:22 16 A. We had the routine measurements of

10:42:22 17 the filler and of the cigarettes. That's it.

10:42:34 18 Q. My question was, did you ever do any

10:42:36 19 testing of the transfer of nicotine from

10:42:38 20 cigarette rod to cigarette smoke?

10:42:40 21 A. No.

10:42:42 22 MR. MURPHY: Objection to form. You

10:42:42 23 can answer the question. Please, Denise, you

10:42:44 24 have to give me an opportunity after the question

10:42:46 25 to object.

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10:42:52 2 A. No, I didn't.

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10:42:58 3 Q. How long did you continue in that

10:43:00 4 position as section supervisor, the position you

10:43:04 5 commenced in July of '86?

10:43:06 6 MR. MURPHY: Objection to form. You

10:43:08 7 can answer.

10:43:08 8 A. I left that position in December of

10:43:10 9 1988.

10:43:14 10 Q. And what position did you assume

10:43:16 11 then?

10:43:18 12 A. Engineer.

10:43:22 13 Q. At what facility?

10:43:22 14 A. At research and development.

10:43:28 15 Q. To whom did you report as an engineer

10:43:30 16 at R&D?

10:43:36 17 A. Are you talking about right when I

10:43:38 18 went back?

10:43:38 19 Q. That's right.

10:43:46 20 A. I reported to Dick Uhl.

10:43:52 21 Q. How long did you stay in the position

10:43:54 22 of engineer at R&D?

10:43:58 23 A. Until December of 1991,

10:44:04 24 approximately.

10:44:06 25 Q. Were there other people to whom you

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10:44:10 2 reported subsequently to Mr. Uhl?

10:44:12 3 MR. MURPHY: Objection to form. Are

10:44:16 4 you asking for a direct report?

10:44:16 5 MR. KILLORY: That's right.

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10:44:18 6 Q. Your prior answer indicated, when I

10:44:20 7 first started I reported to Dick Uhl. My

10:44:22 8 question is simply, was there someone subsequent

10:44:24 9 to Mr. Uhl who you directly reported to.

10:44:26 10 A. At R&D?

10:44:28 11 Q. That's right. In your time -- I'm

10:44:30 12 trying to see in the time from December 1988 to

10:44:32 13 December '91 at R&D, everyone you reported

10:44:36 14 directly to.

10:44:36 15 MR. MURPHY: The question assumes,

10:44:38 16 though, Ted, that she at some point stopped

10:44:42 17 reporting to Mr. Uhl. Why don't you just ask

10:44:44 18 her --

10:44:44 19 Q. It's a simple way to say give me

10:44:48 20 everybody that you directly reported to.

10:44:48 21 MR. MURPHY: Within her position as

10:44:50 22 engineer at R&D?

10:44:54 23 Q. As an engineer between R&D, between

10:44:56 24 December '88 to December '91, to the best of your

10:44:56 25 recollection, give me a list of everyone you

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10:45:00 2 reported to.

10:45:00 3 MR. MURPHY: Objection to form. You

10:45:02 4 can answer.

10:45:04 5 A. Rohn Wagoner. You mean in addition

10:45:06 6 to Dick Uhl? And Barry Fisher.

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10:45:16 7 Q. What are their positions? What were

10:45:20 8 their positions at the time you reported to

10:45:22 9 them?

10:45:24 10 MR. MURPHY: Objection to form. You

10:45:30 11 can answer. It may help to be precise as to the

10:45:34 12 time periods in which you reported to each

10:45:36 13 individual.

10:45:40 14 MR. KILLORY: I was going to get to

10:45:40 15 that.

10:45:40 16 MR. MURPHY: If you accept that

10:45:40 17 clarification.

10:45:42 18 Q. You had said -- let me backtrack to

10:45:44 19 one of your answers. You had said that you

10:45:48 20 reported to Mr. Wagoner in addition to Mr. Uhl.

10:45:50 21 Am I correct that that means that you reported to

10:45:50 22 both at the same time?

10:45:52 23 A. No. No. That's not correct.

10:45:54 24 Q. When did you report to Mr. Wagoner?

10:45:58 25 A. Approximately starting in May or

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10:46:08 2 April time frame of 1989. Wait a minute. No.

10:46:16 3 Mr. Uhl was the first one.

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10:46:18 4 Q. Right.

10:46:22 5 A. December of '88. Pretty much that
10:46:24 6 one month, December of 1988.
10:46:26 7 Q. So then in January of '89 your report
10:46:28 8 changed to a different person?
10:46:30 9 A. I was out on maternity leave, so --
10:46:32 10 but after that, yes, it did.
10:46:34 11 Q. When did you return from maternity
10:46:34 12 leave?
10:46:36 13 A. Approximately March of 1989.
10:46:40 14 Q. And when you returned in March, you
10:46:42 15 reported to Mr. Wagoner?
10:46:42 16 A. Yes, that's correct.
10:46:44 17 Q. At that time, do you recall what his
10:46:46 18 position was?
10:46:48 19 A. I believe his title was section
10:46:52 20 leader.
10:46:58 21 Q. And for how long did you report to
10:47:00 22 Mr. Wagoner?
10:47:12 23 A. Probably until about December or
10:47:14 24 January.
10:47:20 25 Q. December of '89 or January of '90?

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10:47:26 2 MR. MURPHY: Objection to form.
10:47:32 3 A. Yes, that's approximately correct.
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10:47:32 4 Q. Did you then report to Mr. Fisher?
10:47:36 5 A. After another maternity leave, yes.

10:47:44 6 Q. I won't ask who you reported to
10:47:46 7 during your maternity leave. I know.
10:47:52 8 Did your duties -- start with your
10:47:54 9 duties in December of '88, when you became an
10:48:00 10 engineer at R&D. What were your
10:48:02 11 responsibilities?
10:48:02 12 MR. MURPHY: Objection to form. You
10:48:04 13 can answer.
10:48:12 14 A. I had one project that I can recall,
10:48:16 15 that I was writing a computer program that was
10:48:20 16 looking at the utilization of stems and
10:48:32 17 by-products so that any different scenarios could
10:48:40 18 be tried in terms of the different inventories we
10:48:42 19 had on hand.
10:48:46 20 Q. And what were some of the scenarios
10:48:48 21 that you explored in that work?
10:48:52 22 MR. MURPHY: Objection to form.
10:48:54 23 Q. Do you understand the question?
10:48:56 24 A. I wasn't exploring scenarios. I was
10:49:04 25 writing the program so that others could use it.

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10:49:06 2 Q. What were some of the different
10:49:06 3 scenarios for which you were writing programs?
10:49:08 4 MR. MURPHY: Objection to form. If
10:49:10 5 you're asking her did she know what the scenarios
10:49:14 6 were, that's a proper question. When you ask a
10:49:14 7 question like what were some of the scenarios, I

10:49:20 8 think it's vague and ambiguous and I object to
10:49:22 9 the form of the question.
10:49:24 10 Q. What were all of the scenarios for
10:49:26 11 which you were writing programs for stem
10:49:26 12 utilization?
10:49:28 13 MR. MURPHY: Objection to form. Lack
10:49:28 14 of foundation. Why don't you ask her whether --
10:49:30 15 Q. Do you understand the question?
10:49:34 16 A. My recollection of that project is
10:49:44 17 very, very vague. The usage of stems and the
10:49:46 18 amount of stems we had in inventory and how much
10:49:48 19 stem could be used in the different products was
10:49:50 20 the main issue that I recall. For planning
10:50:00 21 purposes, in future planning.
10:50:16 22 Q. Were there different types of stems
10:50:20 23 that were the subject of your computer programs?
10:50:26 24 MR. MURPHY: Objection to form. You
10:50:26 25 can answer.

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10:50:28 2 A. Yes, I believe there was different
10:50:28 3 types of stems.
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10:50:36 4 Q. Are you familiar with the ART
10:50:38 5 program?
10:50:40 6 MR. MURPHY: Objection to form.
10:50:44 7 Q. ART project.
10:50:46 8 A. Yes, I am.

10:50:46 9 Q. What do you understand the ART
10:50:48 10 project to have been?
10:50:56 11 A. Are we talking about the R&D
10:50:56 12 context?
10:50:58 13 Q. I just want to know your
10:51:00 14 understanding of what ART project was.
10:51:06 15 MR. MURPHY: Objection to form. You
10:51:06 16 can answer.
10:51:06 17 A. My understanding -- I have an
10:51:10 18 understanding of a process, not a project.
10:51:12 19 Q. What was the process?
10:51:14 20 A. The process was a means of reducing
10:51:26 21 the nicotine content or removing nicotine from
10:51:28 22 tobacco filler.
10:51:36 23 Q. Were stems involved in that process?
10:51:38 24 MR. MURPHY: Objection to form. You
10:51:40 25 can answer.

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10:51:46 2 A. I'm not sure if you mean are we
10:51:48 3 removing nicotine from stem. Is that what you're
10:51:50 4 asking me?
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10:51:52 5 Q. My question was simply, were stems
10:51:54 6 involved in that process?
10:51:56 7 MR. MURPHY: Objection to form.
10:51:58 8 Vague and ambiguous.
10:51:58 9 MR. KILLORY: It's not vague and
10:52:00 10 ambiguous.

10:52:00 11 Q. If you understand the question, you
10:52:02 12 can answer.

10:52:02 13 MR. MURPHY: It's manifestly vague
10:52:04 14 and ambiguous, but if you understand the
10:52:06 15 question, you can answer the question.

10:52:08 16 Q. Were stems involved in the ART
10:52:10 17 process to the best of your knowledge?

10:52:10 18 MR. MURPHY: Objection. Same
10:52:10 19 objection.

10:52:16 20 A. I'm still not sure I understand your
10:52:18 21 question.

10:52:18 22 Q. Were stems involved in removing the
10:52:24 23 nicotine from the tobacco?

10:52:24 24 MR. MURPHY: Ted, I think maybe we
10:52:26 25 just have a semantic problem. Were stems

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10:52:30 2 involved in removing the nicotine --

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10:52:34 3 Q. Were stems used to remove nicotine in
10:52:36 4 the ART process?

10:52:36 5 MR. MURPHY: Objection. You can
10:52:38 6 answer.

10:52:40 7 A. Not to my knowledge, they weren't
10:52:42 8 used, no.

10:52:42 9 Q. So stems, to the best of your
10:52:44 10 knowledge, stems were not used as a medium for
10:52:46 11 removing nicotine in the ART process?

10:52:50 12 MR. MURPHY: Objection to form.
10:52:54 13 "Used as a medium" is vague and ambiguous.
10:52:54 14 Q. Do you understand the question?
10:52:56 15 MR. MURPHY: You can answer the
10:52:56 16 question if you understand it.
10:53:00 17 A. The way you're asking it, my
10:53:00 18 understanding is, no, they weren't used to remove
10:53:02 19 nicotine from tobacco.
10:53:04 20 Q. My question was were they used as a
10:53:06 21 medium. Do you understand what a medium is in
10:53:08 22 the ART process context?
10:53:10 23 MR. MURPHY: Objection to form. Why
10:53:12 24 don't you tell the witness how you're using the
10:53:14 25 word "medium."

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10:53:16 2 Q. Do you understand what a medium is?
10:53:18 3 A. Not how you're asking it, no.
10:53:24 4 Q. Do you have any knowledge as to how
10:53:26 5 the nicotine was removed from tobacco in the ART
10:53:30 6 process?
10:53:30 7 A. Yes, I do.
10:53:30 8 Q. How was it removed?
10:53:32 9 A. My understanding is that
10:53:38 10 supercritical CO2 is used.
10:53:40 11 Q. Anything else used?
10:53:42 12 A. That was the main --
10:53:46 13 MR. MURPHY: Objection to form. Used

10:53:50 14 to remove nicotine, is that what you're asking?

10:53:52 15 MR. KILLORY: That's right.

10:53:52 16 MR. MURPHY: You can answer the
10:53:54 17 question.

10:53:54 18 A. My understanding is the medium to
10:53:56 19 remove nicotine was supercritical CO2.

10:54:02 20 Q. Where did that nicotine go?

10:54:04 21 A. The nicotine was deposited on the
10:54:06 22 stems.

10:54:06 23 Q. So stems were used in the ART
10:54:08 24 process --

10:54:10 25 MR. MURPHY: Objection to form.

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10:54:10 2 Argumentative.

10:54:12 3 MR. KILLORY: Let me finish my
10:54:12 4 question before you interpose another one of your
10:54:14 5 objections.

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10:54:16 6 Q. Stems were used to remove nicotine in
10:54:18 7 the ART process?

10:54:18 8 MR. MURPHY: Objection to form. That
10:54:20 9 is not her testimony. The question is
10:54:22 10 argumentative. She's given very clear
10:54:26 11 testimony.

10:54:26 12 MR. KILLORY: You're giving a talking
10:54:28 13 objection. If you want to give an objection,
10:54:28 14 fine. The rules in Virginia are clear that

10:54:32 15 speaking, talking objections are not
10:54:34 16 appropriate.
10:54:34 17 Q. Do you understand the question?
10:54:34 18 MR. MURPHY: Your questions are
10:54:38 19 incomprehensible on this point. I think you're
10:54:38 20 able to ask a clear question. You know the
10:54:42 21 documents have been produced to you --
10:54:42 22 MR. KILLORY: You're clearly
10:54:44 23 attempting to obstruct this deposition, where if
10:54:50 24 questions are asked generally or specifically,
10:54:52 25 you find it objectionable. The only thing that

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1 Donaher - Highly Confidential - Trade Secret
10:54:52 2 matters is if she understands my question.
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10:54:54 3 Q. Do you understand whether ART stems
10:55:00 4 were used in the removal -- if stems were used in
10:55:00 5 the ART stem nicotine removal process?
10:55:02 6 MR. MURPHY: Just a minute. There is
10:55:04 7 no effort here whatsoever to obstruct this
10:55:08 8 testimony. I am merely trying to be precise.
10:55:10 9 Your questions are unintelligibly vague and
10:55:14 10 misuse terms that are not familiar to me, that
10:55:16 11 I'm sure are not familiar to the witness, and I'm
10:55:20 12 simply trying to keep this testimony accurate.
10:55:22 13 You're able to ask a precise
10:55:24 14 question. Ask a precise question.
10:55:34 15 Q. There is a question pending. Do you
10:55:34 16 understand?

10:55:34 17 A. Can you please repeat the question?
10:55:36 18 Q. Sure. Do you understand whether ART
10:55:38 19 stems were used in the removal of the nicotine in
10:55:42 20 the ART stem process?
10:55:44 21 MR. MURPHY: Objection to form. You
10:55:46 22 can answer.
10:55:50 23 A. They're used in the removal process.
10:55:52 24 They are not used in the removal.
10:55:54 25 Q. And can you distinguish for me what

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1 Donaher - Highly Confidential - Trade Secret
10:55:58 2 the difference is between the removal and the
10:55:58 3 removal process?
10:55:58 4 MR. MURPHY: Objection to form.
10:56:02 5 Answer the question, if you can.
10:56:02 6 MR. KILLORY: Another example of a
10:56:04 7 completely nonobjectionable question.
10:56:06 8 MR. MURPHY: I am absolutely getting
10:56:06 9 sick of being interrupted with objections, not
10:56:10 10 being able to get objections out.
10:56:12 11 MR. KILLORY: I didn't interrupt you.
10:56:12 12 MR. MURPHY: You have been
10:56:12 13 consistently trying to roll right over my
10:56:14 14 objections with your questions. I am going to
10:56:18 15 put proper objections on the record. When your
10:56:20 16 questions are objectionable, unintelligible or
10:56:24 17 otherwise Proustian in their syntax, I'm going to
10:56:28 18 say so.

10:56:30 19 And I have an absolute right to
10:56:32 20 object to the form of the questions, to object to
10:56:32 21 foundation, to object to vagueness and
10:56:34 22 ambiguities in your questions. If you have a
10:56:36 23 proper question of this witness, she will answer
10:56:40 24 the question.
10:56:40 25 She has a question pending, if you

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1 Donaher - Highly Confidential - Trade Secret
10:56:42 2 want to repeat the question. If she remembers
10:56:44 3 the question, she can answer the question.
10:56:46 4 MR. KILLORY: The record is entirely
10:56:46 5 clear. I've allowed you to make any objection
10:56:50 6 you want. Your speeches consuming the time of
10:56:52 7 this deposition are inappropriate.
10:56:52 8 MR. MURPHY: Do you recall the
10:56:54 9 question?
10:56:56 10 THE WITNESS: I thought I answered
10:56:58 11 the question that was out.
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10:57:02 12 Q. It's hard to recall. The preceding
10:57:22 13 question was, do you understand whether ART stems
10:57:24 14 were use in the removal of the nicotine in the
10:57:26 15 ART stem process. After objection to form, you
10:57:30 16 answered, "They're used in the removal process,
10:57:34 17 they are not used in the removal.
10:57:34 18 "QUESTION: And can you distinguish
10:57:36 19 for me what the difference is between the removal

10:57:36 20 and the removal process?"
10:57:38 21 That's the pending question.
10:57:42 22 A. The way I understand it, C02 is used
10:57:46 23 to do the actual removal, supercritical C02, and
10:57:50 24 that part of the removal process involves
10:57:54 25 depositing the nicotine in the C02 on stems.

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10:58:18 2 Q. In your three years as an engineer at
10:58:22 3 R&D, did you work on other projects in addition
10:58:24 4 to the project we've just been discussing
10:58:28 5 relating to computer programs for stems?

10:58:36 6 A. You jumped from ART -- I did not work
10:58:40 7 on the ART project.

10:58:42 8 Q. You had mentioned in your prior
10:58:44 9 testimony that you worked on computer programs
10:58:46 10 for stems.

10:58:46 11 A. Yes.

10:58:48 12 Q. Let's go back to that. Were there
10:58:50 13 other projects you worked on in your time as an
10:58:52 14 engineer at R&D between December of '88 and
10:58:54 15 December of '91?

10:59:00 16 A. I worked on evaluating a Hauni steam
10:59:12 17 tunnel.

10:59:32 18 Q. Any other projects during that time,
10:59:36 19 '88 through '91?

10:59:38 20 MR. MURPHY: Objection to form.

10:59:38 21 A. I worked on the new expanded tobacco

10:59:54 22 process, as well as the DIET -- did some DIET --
11:00:16 23 general DIET work.
11:00:20 24 Q. In addition to the work on the Hauni
11:00:26 25 steam tunnel, new expanded tobacco, and DIET

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1 Donaher - Highly Confidential - Trade Secret
11:00:26 2 work, were there any other projects that you
11:00:28 3 worked on?
11:00:32 4 A. Not that I can recall at this time.
Page: 47
11:00:38 5 Q. What's the Hauni steam tunnel?
11:00:44 6 A. It's basically a chamber with a
11:00:48 7 perforated plate, where steam is -- comes through
11:00:54 8 the perforations in the plate and the tobacco is
11:01:00 9 exposed to that steam.
11:01:06 10 Q. And what was the nature of the
11:01:08 11 project that you worked on relating to the Hauni
11:01:10 12 steam tunnel?
11:01:10 13 MR. MURPHY: Objection to form. You
11:01:12 14 can answer.
11:01:14 15 A. Basically my thought was that by
11:01:20 16 steaming the tobacco in this manner, that the
11:01:22 17 filling value or the filling power of the tobacco
11:01:24 18 would be increased.
11:01:34 19 Q. Was the -- where is the Hauni steam
11:01:38 20 tunnel used in the production of cigarettes?
11:01:42 21 A. This was a developmental, again,
11:01:46 22 process development, and was located at

11:01:52 23 Semi-Works, which is the R&D -- in R&D. I don't
11:01:58 24 know where it's used currently.
11:02:00 25 Q. You don't know whether it's used at

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1 Donaher - Highly Confidential - Trade Secret
11:02:00 2 Park 500?
11:02:02 3 MR. MURPHY: Objection to form.
11:02:06 4 A. It's not used at Park 500, to my
11:02:06 5 knowledge.
Page: 48
11:02:08 6 Q. Your understanding at the time you
11:02:14 7 worked on the Hauni steam tunnel project is that
11:02:16 8 the Hauni steam tunnel was not in use in a
11:02:18 9 manufacturing operation at that time? Is that
11:02:20 10 correct?
11:02:20 11 MR. MURPHY: Objection to form. You
11:02:22 12 can answer the question.
11:02:26 13 A. I mean, I don't recall getting into a
11:02:32 14 lot of discussions about whether it was used or
11:02:34 15 not used. My assignment was to look at different
11:02:38 16 steam pressures and evaluate whether it was --
11:02:40 17 whether in fact it would increase the filling
11:02:44 18 value of tobacco and how much.
11:02:46 19 Q. Do you recall any other criteria for
11:02:52 20 which you were evaluating the Hauni steam tunnel
11:02:56 21 in addition to whether it would increase filling
11:02:56 22 value?
11:03:00 23 A. No, other than we needed to make sure
11:03:04 24 so we didn't incur extra breakage, those kinds of

11:03:06 25 things, loose ends didn't get worse. You didn't

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1 Donaher - Highly Confidential - Trade Secret

11:03:12 2 want to have a negative impact. You wanted to

11:03:12 3 maintain the other physical quality

11:03:14 4 characteristics.

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11:03:14 5 Q. And what do you mean by "loose ends"

11:03:16 6 in this context?

11:03:20 7 A. If the filler breaks up, if exposure

11:03:24 8 to the steam caused the filler particles to break

11:03:28 9 too small, then they could cause problems falling

11:03:32 10 out of the ends of the finished cigarettes, if it

11:03:32 11 was used.

11:03:36 12 Q. What is new expanded tobacco?

11:03:44 13 A. It's expanded tobacco that's produced

11:03:48 14 using gaseous carbon dioxide.

11:03:52 15 Q. And how is it distinguished from

11:03:54 16 expanded tobacco?

11:04:00 17 A. What type of expanded tobacco are we

11:04:02 18 talking about?

11:04:02 19 Q. Are there different types of expanded

11:04:04 20 tobacco?

11:04:08 21 A. There's DIET -- is that what you're

11:04:12 22 speaking of, the DIET.

11:04:14 23 Q. Yes. DIET is the dry ice expanded

11:04:16 24 tobacco?

11:04:16 25 A. Yes.

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11:04:16 2 Q. Take me back, I'm trying to

11:04:18 3 distinguish new expanded tobacco versus expanded

11:04:22 4 tobacco. There are different -- are there more

11:04:24 5 than one type of new expanded tobacco?

11:04:26 6 MR. MURPHY: Objection to form. You

11:04:28 7 can answer.

11:04:30 8 A. I think new expanded tobacco is a

11:04:36 9 generic term to cover tobacco that's produced or

11:04:40 10 processed using gaseous CO2.

11:04:44 11 Q. Is expanded tobacco not produced

11:04:48 12 using gaseous CO2?

11:04:54 13 A. It's processed and produced using

11:04:54 14 liquid CO2.

11:04:54 15 Q. So that a distinction between

11:05:00 16 expanded tobacco and new expanded tobacco is that

11:05:02 17 one uses liquid CO2 and one uses gaseous CO2 to

11:05:06 18 produce it?

11:05:08 19 MR. MURPHY: Objection to form. You

11:05:08 20 can answer.

11:05:08 21 Q. Is that correct?

11:05:12 22 A. Yes, that is one.

11:05:12 23 Q. What are the other differences

11:05:14 24 between new expanded tobacco and expanded

11:05:20 25 tobacco?

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11:05:20 2 MR. MURPHY: Objection to form. Same

11:05:22 3 objection to form. You can answer.

11:05:34 4 A. The temperature within the tower

11:05:36 5 that's used is different. There can be any

11:05:44 6 number of things that could be different about

11:05:48 7 the temperatures in the process. And I don't

11:05:52 8 know all the specifics. I just know generally.

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11:05:58 9 Q. Do you know whether expanded tobacco

11:06:00 10 is produced at any of Philip Morris's

11:06:04 11 manufacturing facilities?

11:06:06 12 MR. MURPHY: Objection to form.

11:06:14 13 A. It's produced at the manufacturing

11:06:18 14 center.

11:06:20 15 Q. What is the manufacturing center?

11:06:24 16 A. It's our -- one of our processing

11:06:28 17 plants located on Bells Road.

11:06:38 18 Q. And what type of expanded tobacco is

11:06:42 19 produced there?

11:06:46 20 A. DIET.

11:06:48 21 Q. Before we get to DIET, what was the

11:06:50 22 nature of your project regarding new expanded

11:06:52 23 tobacco?

11:06:54 24 MR. MURPHY: Objection to form. You

11:06:56 25 can answer.

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11:06:58 2 A. A good portion of it was doing
11:07:02 3 product work, comparing, since we were developing
11:07:08 4 NET, comparing DIET and NET performance in
11:07:12 5 cigarettes, and in processing.

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11:07:16 6 Q. What is developing NET? I didn't
11:07:22 7 understand part of your prior answer.

11:07:24 8 A. NET.

11:07:26 9 MR. MURPHY: Objection to form.

11:07:28 10 A. Developing NET. When I say "NET," I
11:07:30 11 mean N-E-T, new expanded tobacco.

11:07:52 12 Q. What is dry ice expanded tobacco?

11:07:52 13 A. I don't know what it is. It's dry
11:08:04 14 ice expanded tobacco.

11:08:06 15 Q. How is it distinguished from expanded
11:08:08 16 tobacco?

11:08:08 17 A. To me they're one and the same.

11:08:10 18 Q. You're not aware of any differences
11:08:14 19 between the two?

11:08:14 20 MR. MURPHY: Objection to form. You
11:08:18 21 can answer the question.

11:08:18 22 A. Expanded tobacco is a generic term
11:08:22 23 used in the industry, to my knowledge. Philip
11:08:36 24 Morris's expanded tobacco is DIET, to my
11:08:36 25 knowledge.

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11:08:38 2 Q. And apart from the fact that it's

11:08:44 3 created using CO₂, how does expanded tobacco

11:08:50 4 differ from tobacco?

11:08:52 5 MR. MURPHY: Objection to form. I

11:08:56 6 think this question may misstate or

11:09:00 7 mischaracterize prior testimony. But you can

11:09:02 8 answer the question.

11:09:06 9 Q. Can you explain to me what the

11:09:06 10 difference is between expanded tobacco and

11:09:08 11 tobacco?

11:09:08 12 MR. MURPHY: Objection to form. You

11:09:12 13 can answer the question.

11:09:14 14 A. My understanding of the difference is

11:09:16 15 that expanded tobacco has gone through some means

11:09:20 16 of processing to increase its filling power.

11:09:26 17 Q. And what's your understanding of that

11:09:28 18 process?

11:09:32 19 A. Of which process?

11:09:32 20 Q. That expanded tobacco has gone

11:09:38 21 through to increase its filling power.

11:09:38 22 MR. MURPHY: Objection to form. You

11:09:40 23 can answer the question.

11:09:40 24 A. Philip Morris's standard expansion

11:09:44 25 process is DIET, which is liquid CO₂.

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11:10:04 2 Q. When I asked what projects you had
11:10:10 3 worked on during the '88 to '91 time frame, you
11:10:16 4 mentioned the Hauni steam tunnel, new expanded
11:10:18 5 tobacco, and DIET work. Is the DIET work
11:10:24 6 anything in addition to what you've already
11:10:26 7 described?
11:10:26 8 MR. MURPHY: Objection to form. You
11:10:30 9 can answer the question if you understand it.
11:10:30 10 Q. What was your DIET work?
11:10:38 11 A. The comparison between NET and DIET
11:10:40 12 as well as process parameters within the DIET
11:10:42 13 process, like varying the tower temperature, what
11:10:44 14 would be the effect of varying the tower
11:10:48 15 temperature.
11:10:52 16 Q. When you compared NET, which I take
11:10:56 17 to be new expanded tobacco, with DIET, dry ice
11:11:02 18 expanded tobacco, what were the criteria of your
11:11:04 19 comparison?
11:11:06 20 A. The major focus was on sieve size,
11:11:12 21 breakage, loose ends, firmness, tobacco usage.
11:11:20 22 But any time you compare anything that's in
11:11:26 23 cigarettes, you run a normal battery of tests.
11:11:30 24 Q. Is NET, new expanded tobacco, used in
11:11:36 25 any Philip Morris cigarettes?

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1 Donaher - Highly Confidential - Trade Secret
11:11:38 2 A. Not to my knowledge.
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11:11:42 3 Q. Do you know when DIET was first

11:11:44 4 used? Is DIET used in Philip Morris cigarettes?
11:11:48 5 A. Yes, it is.
11:11:50 6 Q. Do you know which brands?
11:11:52 7 A. No, I don't.
11:11:52 8 Q. Do you know when it was first used in
11:11:54 9 Philip Morris cigarettes?
11:11:56 10 A. No, I don't.
11:11:58 11 Q. Do you know whether at the time you
11:12:00 12 were doing your work on DIET, between '88 and
11:12:02 13 '91, whether it then was being used in Philip
11:12:06 14 Morris cigarettes?
11:12:06 15 A. I believe it was.
11:12:12 16 Q. Did your comparison testing of DIET
11:12:16 17 and NET, new expanded tobacco, include any
11:12:20 18 comparison of the constituent components of the
11:12:24 19 two products?
11:12:26 20 MR. MURPHY: Objection to form. You
11:12:28 21 can answer the question.
11:12:30 22 A. When you say "constituent
11:12:32 23 components," I'm not sure --
11:12:36 24 Q. You have a background in chemical
11:12:36 25 engineering; correct?

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1 Donaher - Highly Confidential - Trade Secret
11:12:38 2 A. Mm-hmm.
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11:12:40 3 Q. My understanding from your prior
11:12:42 4 answer was that the comparison of NET and DIET

11:12:46 5 had to do with size, breakage, shape, the
11:12:52 6 physical characteristics.
11:12:54 7 A. Mm-hmm.
11:12:56 8 Q. What I mean by "components" is more
11:12:58 9 the elements that make up the NET and the DIET as
11:13:06 10 contrasted with its physical characteristics. So
11:13:08 11 my question is simply, did you do any evaluation
11:13:14 12 of differences in the component makeup of DIET
11:13:16 13 and NET?
11:13:18 14 MR. MURPHY: Objection to form. You
11:13:20 15 can answer the question if you understand what
11:13:22 16 you're being asked.
11:13:22 17 A. When you say "component," to me it
11:13:24 18 means the type of tobacco. And the type of
11:13:30 19 tobacco that's used in the DIET, in the NET, is
11:13:32 20 exactly the same.
11:13:34 21 Q. Did you do any testing as to whether
11:13:36 22 the DIET process versus the NET process had any
11:13:40 23 impact on the tobacco ingredients?
11:13:44 24 MR. MURPHY: Objection to form. You
11:13:48 25 can answer, if you understand the question.

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1 Donaher - Highly Confidential - Trade Secret
11:13:54 2 A. We're not talking ingredients here.
11:13:56 3 We're talking tobacco. And like I mentioned
11:13:58 4 earlier, that we did routine physical evaluations
11:14:04 5 and normal evaluations that are done on finished
11:14:08 6 cigarettes.

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11:14:08 7 Q. In addition to the -- by "physical
11:14:12 8 evaluation," do you mean what you testified to
11:14:16 9 earlier about size, fragments, things of that
11:14:18 10 nature?

11:14:18 11 MR. MURPHY: Objection to form. You
11:14:20 12 can answer.

11:14:26 13 A. By "physical" it could be the tobacco
11:14:30 14 itself or the finished cigarette, which could be
11:14:34 15 firmness of the cigarette, could be the loose
11:14:36 16 ends of the cigarette. It could be the length of
11:14:38 17 the filler.

11:14:40 18 Q. Does it include chemical analysis?

11:14:46 19 A. Chemical testing on tobacco filler or
11:14:52 20 cigarettes is pretty normal. So yes, that was
11:14:56 21 done.

11:15:00 22 Q. So you did do chemical testing of the
11:15:06 23 DIET cigarettes versus the NET, new expanded
11:15:08 24 tobacco, cigarettes?

11:15:10 25 MR. MURPHY: Objection to form. You

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11:15:10 2 can answer.

11:15:10 3 A. It depends what your definition of
11:15:12 4 chemical testing is.

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11:15:14 5 Q. What's your definition of chemical
11:15:16 6 testing?

11:15:20 7 A. There's a routine battery of physical

11:15:22 8 chemical and smoke tests done on filler and
11:15:28 9 finished cigarettes. And I can't even begin to
11:15:30 10 name what all of them are or were.
11:15:32 11 Q. Earlier when you described in a
11:15:36 12 different position routine chemical testing you
11:15:38 13 did, you mentioned testing for sugars, alkaloids,
11:15:40 14 nitrates, total nitrogen. Was that kind of
11:15:44 15 chemical testing done on the DIET and NET
11:15:50 16 tobacco?
11:15:50 17 MR. MURPHY: Objection to form. You
11:15:56 18 can answer the question.
11:16:02 19 A. It may very well have been. I don't
20 know.
11:16:02 21 Q. You don't recall?
11:16:04 22 A. I don't recall, no.
11:16:04 23 Q. Do you recall whether any chemical
11:16:06 24 testing was done on the DIET and the NET
11:16:10 25 tobacco?

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1 Donaher - Highly Confidential - Trade Secret
11:16:16 2 A. It was a routine battery of tests,
11:16:18 3 which may have included some of those routine
11:16:18 4 things I mentioned.
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11:16:18 5 Q. You said it may have included. What
11:16:20 6 I'm trying to pin down is, do you recall whether
11:16:22 7 it did include the chemical testing?
11:16:24 8 A. No, I don't.
11:16:26 9 MR. MURPHY: Ted, it's now about

11:16:28 10 11:15. I don't want to interrupt your --
11:16:30 11 MR. KILLORY: We can take a break
11:16:32 12 right now. Let's take a break. It is in all our
11:16:36 13 interests that we keep the breaks fairly short.
11:16:38 14 MR. MURPHY: That's fine.
11:16:40 15 MR. KILLORY: So we can try to move
11:16:40 16 this along.
11:16:42 17 THE VIDEO OPERATOR: We're going off
11:16:42 18 the record. The time on the screen is 11:16:45.
11:16:46 19 (A recess was taken.)
11:31:18 20 THE VIDEO OPERATOR: We're back on
11:31:58 21 the record. The time on the screen is 11:32:01.
11:32:02 22 Q. Ms. Donaher, did you consult with
11:32:06 23 counsel during the break?
11:32:06 24 A. No.
11:32:10 25 Q. After December of '91, what position

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1 Donaher - Highly Confidential - Trade Secret
11:32:14 2 did you assume?
11:32:18 3 A. I went to Park 500.
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11:32:28 4 Q. And what position at Park 500 did you
11:32:28 5 assume?
11:32:30 6 A. Senior process control engineer.
11:32:38 7 Q. What were your duties as senior
11:32:38 8 process control engineer?
11:32:40 9 A. I was assigned a variety of projects,
11:32:50 10 to improve efficiency or -- improve yield or

11:32:58 11 efficiency of the process.

11:33:04 12 Q. Was there any particular part of the

11:33:04 13 Park 500 process that was your responsibility?

11:33:06 14 A. No.

11:33:08 15 Q. So it's on a project by project basis

11:33:10 16 that you were assigned duties?

11:33:12 17 A. That's correct.

11:33:14 18 Q. To whom did you report when you first

11:33:16 19 assumed that position in December of '91?

11:33:26 20 A. Dawn Saunders.

11:33:28 21 Q. I take it that's D-A-W-N?

11:33:28 22 A. That's correct.

11:33:30 23 Q. That's a woman?

11:33:30 24 A. That's correct.

11:33:30 25 Q. Do you know to whom Ms. Saunders

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11:33:32 2 reported?

11:33:34 3 A. I believe she reported to Jimmy

11:33:36 4 Narren.

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11:33:42 5 Q. How long did you hold the position of

11:33:42 6 senior process control engineer?

11:33:46 7 A. Until my current position in November

11:33:48 8 of 1994.

11:34:00 9 Q. What projects did you work on as

11:34:02 10 senior process control engineer?

11:34:04 11 MR. MURPHY: Is this question

11:34:08 12 directed to projects prior to March 24, 1994?

11:34:08 13 MR. KILLORY: Sure.

11:34:10 14 Q. Let's start -- I want you to be able

11:34:12 15 to do it to the best of your recollection. If

11:34:22 16 chronologically helps, I would just like you to

11:34:24 17 take me from the time you started through that

11:34:26 18 date, the date Mr. Murphy mentioned, what

11:34:28 19 projects you worked on.

11:34:30 20 MR. MURPHY: Objection to form. You

11:34:30 21 can answer the question.

11:34:32 22 A. I'll tell you the ones I can

11:34:32 23 remember.

11:34:34 24 Q. That's fine.

11:34:34 25 A. One of the projects had to do with

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11:34:40 2 simply usage of steam in the plant, how much

11:34:48 3 steam were we using. Another project had to do

11:35:14 4 with eliminating RL pads. Another project had to

11:35:18 5 do with developing a means to dispose of stems

11:35:22 6 from the Bermuda Hundred plant.

11:35:34 7 Another project was to become

11:35:46 8 familiar with the Wiegand evaporator and try to

11:35:48 9 assist operations with some of the problems they

11:35:50 10 had been having with the unit. Those are the

11:36:12 11 major ones I can recall right now.

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11:36:16 12 Q. During this 1991 to 1994 time frame

11:36:22 13 when you were senior process control engineer,

11:36:24 14 did you also work on a project involving
11:36:30 15 centrifuge sludge?
11:36:32 16 A. Yes, I did.
11:37:08 17 Q. Excluding your conversations with
11:37:10 18 Philip Morris lawyers, have you had any
11:37:14 19 conversations with anyone about this lawsuit by
11:37:18 20 Philip Morris against ABC?
11:37:20 21 A. Not other than scheduling purposes,
11:37:22 22 like I've said earlier.
11:37:26 23 Q. Let me be clear. I wasn't referring
11:37:28 24 to this deposition. I was referring more broadly
11:37:30 25 to any conversations about this lawsuit.

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11:37:32 2 MR. MURPHY: And again, excluding
11:37:34 3 conversations with Philip Morris counsel.
11:37:34 4 MR. KILLORY: That's correct.
11:37:36 5 MR. MURPHY: You can answer the
11:37:36 6 question.
11:37:38 7 A. I think it's common conversation in
11:37:40 8 the plant.

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11:37:44 9 Q. With whom do you recall having such
11:37:46 10 discussions?
11:37:50 11 A. I don't remember any specific
11:37:52 12 conversations that I was involved with, but it
11:37:56 13 was routine chat in the -- around the coffee
11:37:58 14 pot.
11:38:00 15 Q. Do you remember the substance of any

11:38:02 16 of those conversations?

11:38:06 17 A. Just people surprised and dismayed at

11:38:08 18 the lawsuit, and after the Day One broadcast.

11:38:16 19 Q. Do you have an understanding as to

11:38:18 20 what Philip Morris has alleged in the lawsuit?

11:38:28 21 A. Just generally that the information

11:38:28 22 in the Day One broadcast is simply not true.

11:38:34 23 Q. Do you have any understanding beyond

11:38:36 24 that, any of the specifics as to what was in the

11:38:38 25 Day One broadcast?

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11:38:40 2 A. I mean, I've seen the show.

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11:38:42 3 Q. You have seen the Day One broadcast?

11:38:44 4 A. (Witness nods in the affirmative.)

11:38:44 5 Q. Did you see it at the time it was

11:38:46 6 aired?

11:38:48 7 A. I saw one of the broadcasts, but I

11:38:50 8 think there was two of them. I don't recall

11:38:52 9 which one I saw.

11:38:56 10 Q. My question was only did you see it

11:39:00 11 at the time it was aired, as contrasted with on a

11:39:02 12 videotape at some subsequent time.

11:39:04 13 A. Yes, I saw one of them. I just don't

11:39:06 14 recall which one. Yes, I did see one.

11:39:08 15 Q. But you have not seen both

11:39:10 16 broadcasts?

11:39:14 17 A. I'm aware there were two. I don't
11:39:20 18 know which ones that I've seen.
11:39:26 19 Q. Do you know whether the one you have
11:39:28 20 seen is the basis for this lawsuit?
11:39:30 21 MR. MURPHY: Objection to form. Why
11:39:34 22 don't you ask her if she knows what broadcast was
11:39:38 23 the basis for this lawsuit, If one of the
11:39:42 24 broadcasts was the basis for this lawsuit.
11:39:42 25 MR. KILLORY: That's fair.

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11:39:44 2 Q. Do you know which broadcast was the
11:39:46 3 basis for this lawsuit?
11:39:46 4 A. No, I don't.
11:39:50 5 Q. In the course of your work for Philip
11:39:54 6 Morris, have you done any work relating to
11:39:56 7 measuring nicotine levels in cigarettes?
11:39:58 8 MR. MURPHY: Objection to form. You
11:40:02 9 can answer the question.
11:40:02 10 A. No.
11:40:04 11 Q. Have you ever had any conversations
11:40:06 12 with any Philip Morris personnel relating to the
11:40:10 13 level of nicotine in cigarettes?
11:40:14 14 A. No.
11:40:20 15 Q. Have you ever done any work relating
11:40:26 16 to the relevant efficiency of various types of
11:40:26 17 cigarettes as delivery systems for nicotine?
11:40:30 18 MR. MURPHY: Objection to form.

11:40:32 19 Argumentative. Lack of foundation. You can
11:40:36 20 answer the question.
11:40:36 21 A. No.
11:40:40 22 Q. Have you ever done any work relating
11:40:42 23 to the transfer of nicotine from tobacco to
11:40:44 24 smoke?
11:40:44 25 MR. MURPHY: Objection to form. You

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11:40:46 2 can answer.
11:40:48 3 A. Not that I can remember.
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11:40:50 4 Q. Have you ever authored any study
11:40:54 5 relating to the transfer of nicotine from tobacco
11:40:56 6 to smoke?
11:40:56 7 MR. MURPHY: Objection to form. You
11:40:58 8 can answer.
11:41:00 9 A. Not that I know of.
11:41:20 10 MR. KILLORY: I would like to have
11:41:22 11 you mark this as Donaher Exhibit 1, please.
12 (Donaher Exhibit 1 for
13 identification, Nicotine transfer to smoke,
14 investigations of Brazilian cigarettes and a
15 review of some factors affecting nicotine
16 transfer to smoke.)
11:42:00 17 Q. Ms. Donaher, the court reporter has
11:42:02 18 handed you a document produced by Philip Morris
11:42:04 19 that has been marked as Donaher Exhibit 1. It's

11:42:08 20 a report titled, "Nicotine transfer to smoke,
11:42:12 21 investigations of Brazilian cigarettes and a
11:42:14 22 review of some factors affecting nicotine
11:42:18 23 transfer to smoke."

11:42:20 24 According to the two lines on the
11:42:24 25 cover page, the report is by R.M. Ikeda,

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1 Donaher - Highly Confidential - Trade Secret
11:42:30 2 I-K-E-D-A, and, it appears, J.R. Hearn,
11:42:32 3 H-E-A-R-N. And it was approved by L.F. Meyer,
11:42:38 4 M-E-Y-E-R, and P.N. Gauvin, G-A-U-V-I-N.
11:42:48 5 Do you know who Mr. Ikeda is?
11:42:52 6 MR. MURPHY: Objection to form. The
11:42:54 7 document speaks for itself. It also might be
11:42:54 8 helpful before we start questions with respect to
11:42:58 9 it if we could get it identified into the record
11:43:00 10 by Bates number. Just a housekeeping matter.
11:43:02 11 MR. KILLORY: That's fine. You're
11:43:06 12 absolutely right. The Bates stamp number is, for
11:43:10 13 this document, on the first page is PA 918326,
11:43:16 14 and on the last page of the document, PA 918381.
11:43:18 15 The corresponding production numbers from Philip
11:43:22 16 Morris are 2022222006 on the first page.
11:43:32 17 2022222061 on the last page.

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11:43:40 18 Q. My question was simply, do you know
11:43:42 19 who Mr. Ikeda is.

11:43:44 20 A. I know the name. And I believe I
11:43:48 21 knew -- could put a face to that name.

11:43:50 22 Q. Do you know Mr. or Ms. Ikeda's first
11:43:54 23 name?
11:43:54 24 A. I believe the R refers to Bob.
11:44:00 25 Q. So it's Robert Ikeda?

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11:44:04 2 A. I don't know.
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11:44:06 3 Q. How about Mr. Hearn, J.R. Hearn, do
11:44:10 4 you know him, or her?
11:44:12 5 A. I don't know that name, no.
11:44:14 6 Q. L.F. Meyer?
11:44:18 7 A. Yes, I know that name, and I know
11:44:22 8 that person.
11:44:22 9 Q. How about P.N. Gauvin? Do you know
11:44:26 10 who that is?
11:44:28 11 A. I know who it is.
11:44:30 12 Q. Who is Mr. Ikeda? Where does he
11:44:34 13 work?
11:44:34 14 A. I don't know where he works now.
11:44:42 15 Q. Do you know whether he worked in
11:44:42 16 R&D?
11:44:52 17 A. I recall that name and I believe he
11:44:52 18 worked at R&D at one time. I don't know what
11:44:54 19 time periods.
11:44:54 20 Q. How about Mr. Hearn, do you know
11:44:56 21 where he works?
11:44:56 22 A. I don't know that person or that

11:44:58 23 name.

11:44:58 24 Q. I'm sorry, that's right. How about

11:45:00 25 Mr. Meyer? Where does he work?

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11:45:06 2 A. I believe he worked at R&D.

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11:45:08 3 Q. Do you know if he still works for

11:45:08 4 Philip Morris?

11:45:10 5 A. I believe he's passed away.

11:45:14 6 Q. How about Mr. Gauvin?

11:45:16 7 A. I don't know.

11:45:24 8 Q. Could you turn to to page 52 of this

11:45:26 9 document, Ms. Donaher. It's Bates stamped PA

11:45:38 10 918380.

11:45:44 11 MR. MURPHY: Production number

11:45:44 12 2022222060.

11:45:52 13 Q. On page 52, I call your attention to

11:45:54 14 reference 7. It's a page of references.

11:46:00 15 Reference 7 has four entries, one of which -- the

11:46:02 16 last of which reads, "Donaher, D. 'Tobacco

11:46:08 17 properties application blend component study

11:46:10 18 number 10,' special report number 85-229,

11:46:18 19 November 21, 1985."

11:46:22 20 Is the D. Donaher referred to there

11:46:24 21 you?

11:46:24 22 A. That's correct.

11:46:26 23 Q. Did you author the tobacco properties

11:46:28 24 application blend component study, component

11:46:30 25 study number 10?

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11:46:34 2 A. Yes.

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11:46:44 3 Q. Could you now turn to page 16 of the

11:46:46 4 document, which is Bates stamped PA 918345. The

11:46:56 5 production number is 2022222025. The page is

11:47:08 6 titled, "Nicotine transfer to smoke for various

11:47:10 7 blend components." I'll read into the record the

11:47:16 8 first part of the paragraph.

11:47:18 9 "Since the analyses carried out on

11:47:18 10 Galaxy and advanced cigarettes did not explain

11:47:22 11 their difference in nicotine transfer to smoke, a

11:47:24 12 study was made to determine nicotine transfer of

11:47:26 13 the various blend components. This information

11:47:30 14 was available in the series of cigarette blend

11:47:32 15 component studies."

11:47:34 16 And then there is a footnote type

11:47:36 17 reference to 7, "The percent nicotine transfer

11:47:40 18 was calculated from the average values of the

11:47:44 19 individual blend components and plotted against

11:47:44 20 tar. The four plots are shown in figure 7."

11:47:48 21 And then as the document shows,

11:47:50 22 immediately below that text are four plots or

11:47:54 23 graphs under the heading "Figure 7, percent

11:47:58 24 nicotine transfer versus tar, cigarette blend

11:48:04 25 component studies."

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11:48:04 2 Do you see that?

11:48:06 3 A. Yes, I do.

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11:48:16 4 Q. The citation 7, footnote 7 on that

11:48:18 5 page, does that refer to the items on page 52,

11:48:24 6 reference 7?

11:48:28 7 A. I don't know what the author intended

11:48:30 8 to refer to, but reference 7 does refer to blend

11:48:38 9 component studies.

11:48:42 10 Q. So the text refers to blend component

11:48:44 11 studies, and the reference citation on page 52 is

11:48:46 12 to a series of -- to be fair, the one with your

11:48:52 13 name beside it says, "Blend component study."

11:48:54 14 The other three are cigarette blend components

11:48:56 15 studies, 6, 7, 9, respectively.

11:49:00 16 Is it your understanding, looking at

11:49:02 17 those two pages do you have an understanding as

11:49:02 18 to whether those are the blend component studies

11:49:06 19 being referred to on page 16?

11:49:08 20 MR. MURPHY: Objection to form. You

11:49:10 21 can answer.

11:49:14 22 A. In the sentence that says "This

11:49:18 23 information was available in this blend component

11:49:20 24 studies," I don't know what the author's intent

11:49:26 25 was, what information the author is referring to,

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11:49:30 2 but blend component study is listed as reference

11:49:30 3 7, and I did author that document.

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11:49:54 4 Q. If you look at the plots that are

11:50:00 5 part of figure 7, there are four plots or

11:50:00 6 graphs. The one in the upper left corner is

11:50:06 7 labeled the blend component study, 10, the Roman

11:50:10 8 numeral X, looks like ACC, number 85-229. Is

11:50:16 9 that a count number? Do you know?

11:50:20 10 A. I believe that refers to the R&D

11:50:22 11 central files accession number.

11:50:34 12 Q. Do you recognize that number as one

11:50:36 13 associated with blend component study number 10?

11:50:38 14 A. I wouldn't have any recollection one

11:50:40 15 way or the other.

11:50:50 16 Q. The citation on page 52, could you

11:50:52 17 turn to that, please.

11:50:52 18 (Witness complies.)

11:51:02 19 Q. The same number, 85-229, appears

11:51:06 20 there. Is that correct?

11:51:10 21 A. Yes.

11:51:10 22 Q. Beside the study with your name

11:51:10 23 beside it.

11:51:16 24 A. Yes, the two numbers are the same.

11:51:18 25 Q. Turning back to page 16, please.

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11:51:20 2 (Witness complies.)

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11:51:28 3 Q. The plot in the upper left-hand

11:51:32 4 corner we were just referring to, blend component

11:51:34 5 study number 10, do you recognize that plot?

11:51:38 6 A. No, I don't.

11:51:42 7 Q. In the left side, the vertical column

11:51:46 8 of that plot, it says, "Percentage nic

11:51:50 9 transfer." Do you know what that means?

11:51:56 10 A. No, I don't.

11:52:00 11 Q. And the horizontal line at the base,

11:52:06 12 "Tar," abbreviation for milligrams, slash,

11:52:10 13 "cigarette," with a series of numbers, do you

11:52:14 14 know what that represents?

11:52:16 15 A. It was one of the measurements that

11:52:16 16 was taken on cigarettes during the blend

11:52:18 17 components study I'm aware of.

11:52:26 18 Q. Are you aware of a percentage of

11:52:32 19 nicotine transfer as a measure that was taken as

11:52:32 20 a part of blend component study number 10?

11:52:36 21 MR. MURPHY: Objection to form.

11:52:38 22 A. To the best of my knowledge, it was

11:52:40 23 not included. I don't recall any such

11:52:44 24 measurement.

11:52:56 25 Q. On the plot associated with study

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11:53:00 2 number 10 as part of figure 7, does ET stand for
11:53:08 3 expanded tobacco?

11:53:12 4 MR. MURPHY: Ted, the witness has
11:53:12 5 already testified that she hasn't seen this plot
11:53:14 6 before.

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11:53:16 7 Q. Independent of this document. Let me
11:53:16 8 correct my question.

11:53:18 9 MR. MURPHY: Are you asking whether
11:53:18 10 she has any understanding of what this document
11:53:20 11 means?

11:53:22 12 MR. KILLORY: Let me clarify.

11:53:24 13 Q. Independent of this document, do you
11:53:26 14 have an understanding that ET represents expanded
11:53:28 15 tobacco?

11:53:28 16 A. Yes.

11:53:30 17 Q. And that DIET, D-I-E-T, represents
11:53:34 18 dry ice expanded tobacco?

11:53:36 19 A. Yes.

11:53:38 20 Q. Do you have any understanding,
11:53:40 21 independent of this document for the moment, of
11:53:42 22 what ES represents?

11:53:44 23 A. Expanded stem.

11:53:46 24 Q. Do you have any understanding as to
11:53:48 25 what OR represents?

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11:54:02 2 A. OR in itself aside from this document

11:54:04 3 doesn't mean anything to me.

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11:54:10 4 Q. How about looking at this document,

11:54:14 5 do you have any understanding as to what OR

11:54:16 6 represents?

11:54:20 7 MR. MURPHY: Objection. You can

11:54:26 8 answer the question if you understand it.

11:54:32 9 A. If I look at this data, my guess or a

11:54:38 10 guess would be that OR stands for Oriental. I

11:54:42 11 can't propose to know what this author's symbols

11:54:44 12 meant.

11:54:44 13 Q. And by "Oriental," you mean Oriental

11:54:48 14 tobacco?

11:54:48 15 A. That's correct.

11:54:50 16 Q. Do you have an understanding as to

11:54:52 17 what BR represents?

11:54:54 18 MR. MURPHY: An understanding

11:54:56 19 independent of this document?

11:54:58 20 MR. KILLORY: Yes.

11:55:00 21 A. As a separate designation it doesn't

11:55:02 22 mean anything to me.

11:55:04 23 Q. In the context of this graph, as best

11:55:06 24 you can understand it, do you have any

11:55:08 25 understanding as to what BR represents?

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11:55:12 2 A. I would guess that the author was

11:55:14 3 intending it to stand for "bright."

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11:55:16 4 Q. Bright tobacco?

11:55:18 5 A. That's correct.

11:55:22 6 Q. How about -- do you have any

11:55:26 7 independent understanding as to BU?

11:55:32 8 A. BU, again, doesn't mean anything.

11:55:36 9 Q. The same question in the context of

11:55:38 10 looking at this, do you have any understanding of

11:55:38 11 what BU would represent here?

11:55:42 12 A. I would guess the author intended BU

11:55:44 13 to stand for burley.

11:55:46 14 Q. How about HR, do you have any

11:55:48 15 independent understanding of HR?

11:55:56 16 A. It doesn't mean anything to me.

11:55:58 17 Q. How about looking at this document,

11:56:04 18 do you have any understanding?

11:56:04 19 A. No.

11:56:04 20 Q. I can't frankly be for sure whether

11:56:06 21 that's HR or MR. Does MR have any meaning to

11:56:10 22 you?

11:56:10 23 MR. MURPHY: Independent of this

11:56:12 24 document?

11:56:12 25 MR. KILLORY: Independent of this

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11:56:12 2 document.

11:56:14 3 A. No.

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11:56:16 4 Q. How about looking at this document.

11:56:16 5 Is there anything about MR?

11:56:18 6 A. No.

11:56:18 7 Q. I don't think it is. The symbol

11:56:26 8 150-B, on figure 7, on the graph we've been

11:56:28 9 looking at, independent of this document, do you

11:56:30 10 have an understanding as to what 150-B

11:56:32 11 represents?

11:56:34 12 A. 150-B is a designation for one of the

11:56:36 13 flavor systems of RL.

11:56:40 14 Q. Does that -- do you mean by that the

11:56:44 15 RL using a particular flavor system?

11:56:46 16 MR. MURPHY: I object to form. You

11:56:48 17 can answer.

11:56:56 18 A. It's the name of one of the -- it can

11:56:56 19 refer to either the flavor components or the

11:56:58 20 finished product itself.

11:57:00 21 Q. Or the finished product using that

11:57:02 22 flavor component?

11:57:02 23 A. Yes. You don't really know.

11:57:04 24 Q. How about RCB? Do you have an

11:57:08 25 understanding as to what that means?

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11:57:08 2 MR. MURPHY: Independent of this

11:57:10 3 document?

11:57:10 4 MR. KILLORY: Independent of this

11:57:10 5 document.

11:57:12 6 A. I don't know what RCB stands for, but

11:57:18 7 it's our product that's made at the BL plant, the
11:57:22 8 same as BL.
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11:57:28 9 Q. Do you have an independent
11:57:30 10 understanding as to the meaning of TC?
11:57:38 11 A. Similar to the 150-B, it could be
11:57:42 12 a -- often how we describe the RLTC flavor system
11:57:46 13 or product.
11:57:50 14 Q. Am I correct are there two basic
11:57:52 15 flavor systems used for the RL product?
11:57:56 16 A. Yes.
11:58:00 17 Q. And those two systems are what?
11:58:02 18 MR. MURPHY: As of what date?
11:58:02 19 MR. KILLORY: As of March of 1994.
11:58:10 20 A. RLTC and RL 150-B.
11:58:12 21 Q. And you've heard of RLTC referred to
11:58:16 22 as TC?
11:58:16 23 MR. MURPHY: Objection to form.
11:58:20 24 A. I don't know that I've ever heard it
11:58:24 25 without the RL attached to it.

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Page: 79
11:58:54 2 Q. Have you ever seen Exhibit Number 1
11:59:00 3 before? By Exhibit Number 1 I'm referring to the
11:59:00 4 whole document.
11:59:04 5 A. Oh, no, I haven't.
11:59:10 6 Q. Looking at the plot on page 16, do
11:59:22 7 you have an understanding sitting here today of

11:59:24 8 what that represents?

11:59:26 9 A. No, I don't.

11:59:28 10 MR. MURPHY: Objection to form.

11:59:28 11 Q. You have no understanding whatsoever

11:59:30 12 of what the plot labeled "Blend component study

11:59:34 13 number 10" shows?

11:59:40 14 A. I've never seen a graph in this

11:59:40 15 form. I've never discussed any information along

11:59:46 16 these lines. So anything I said would be a

11:59:50 17 guess.

11:59:50 18 Q. My question is simply, just looking

11:59:58 19 at that chart, looking at the graph, whether you

11:59:58 20 have any understanding as to its meaning.

12:00:00 21 MR. MURPHY: Objection. Asked and

12:00:00 22 answered. The witness has told you what her

12:00:04 23 understanding is.

12:00:08 24 Q. You can answer.

12:00:10 25 MR. MURPHY: You can answer the

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12:00:10 2 question.

12:00:12 3 A. I can't describe a graph when I have

12:00:12 4 no understanding of what "percent nicotine

12:00:16 5 transfer" means. I have a general understanding

12:00:18 6 of a tar measurement, that it's a number that

12:00:22 7 I've seen.

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12:00:24 8 Q. When have you seen measurements of

12:00:26 9 tar? In what context?

12:00:30 10 MR. MURPHY: Objection. Compound
12:00:34 11 question. If you want to ask them as separate
12:00:36 12 questions, that's fine.
12:00:36 13 Q. In what context have you seen tar
12:00:40 14 measurements?
12:00:44 15 A. In the tobacco lot analysis we
12:00:52 16 measured tar. Blend component study, tar was
12:00:58 17 measured amongst other things, a full battery of
12:00:58 18 things that were measured. Any routine testing
12:01:10 19 has a standard cigarette smoking analysis that's
12:01:10 20 done.
12:01:18 21 Q. Have you ever seen any measurements
12:01:20 22 of tar in the context of a study of nicotine
12:01:24 23 levels?
12:01:24 24 A. No.
12:01:26 25 MR. MURPHY: Objection to form.

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12:01:40 2 Q. If you could just put Exhibit 1 to
12:01:42 3 the side, just for the moment, Ms. Donaher.
12:01:46 4 MR. KILLORY: I'm having the court
12:01:48 5 reporter mark this as Donaher Exhibit Number 2.
6 (Donaher Exhibit 2 for
7 identification, memorandum from S.E. Medak and
8 T.L. Skidmore to Mr. K.S. Burns, dated August 27,
9 1984.)

12:02:24 10 MR. KILLORY: Donaher Exhibit Number

12:02:26 11 2 is a three-page document, which bears the Bates
12:02:38 12 stamp PB 109884 through 109886, and bears the
12:02:38 13 production numbers 2031436008 through 010. It
12:02:50 14 was -- for the record it should be clear, it was
12:02:50 15 also introduced as Exhibit Number 4 to the
12:02:52 16 Burnley deposition.

12:02:54 17 It's a memorandum from S.E. Medak and
12:03:02 18 T.L. Skidmore to Mr. K.S. Burns. The subject
12:03:04 19 matter is effect of alkaloid level in filler on
12:03:10 20 nicotine delivery in cigarettes. The date is
12:03:12 21 August 27, 1984.

12:03:20 22 Q. Could you take a minute to look at
12:03:20 23 the document, please, Ms. Donaher.

12:03:22 24 (Witness complies.)

12:05:12 25 Q. Do you recall ever seeing this

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1 Donaher - Highly Confidential - Trade Secret
12:05:12 2 document before?

12:05:14 3 A. No, I haven't.

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12:05:16 4 Q. Who is Mr. or Ms. Medak, do you
12:05:18 5 know?

12:05:18 6 A. Yes, I do.

12:05:18 7 Q. Who is --

12:05:20 8 A. Steve Medak.

12:05:22 9 Q. What is his position?

12:05:26 10 MR. MURPHY: What is his position, or
12:05:28 11 what was his position as of August 27, 1984?

12:05:30 12 Q. Is he currently employed by Philip

12:05:34 13 Morris?
12:05:34 14 A. I don't know.
12:05:34 15 Q. Do you know what his position was in
12:05:36 16 1984?
12:05:38 17 A. Probably a technician, process
12:05:46 18 technician of some sort.
12:05:48 19 Q. Working in what department?
12:05:52 20 A. I don't know. I can't say for sure
12:05:58 21 where he was in 1984.
12:05:58 22 Q. Have you ever worked with him?
12:05:58 23 A. On a limited basis, yes.
12:06:00 24 Q. In what context?
12:06:04 25 A. When we were establishing the primary

MANHATTAN REPORTING CORP.

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1 Donaher - Highly Confidential - Trade Secret
12:06:08 2 processing for TLA, he had some expertise in
12:06:16 3 small scale processing that we needed, so we had
12:06:16 4 some discussions with him.
Page: 83
12:06:18 5 Q. And when you're referring to TLA in
12:06:20 6 this context you're referring to what?
12:06:22 7 A. The tobacco lot analysis.
12:06:24 8 Q. How about Mr. Skidmore, or
12:06:26 9 Ms. Skidmore --
12:06:26 10 MR. MURPHY: Objection to form. You
12:06:28 11 can answer.
12:06:28 12 MR. KILLORY: I didn't finish the
12:06:30 13 question.

12:06:30 14 MR. MURPHY: I apologize, then.
12:06:32 15 Q. Do you know who Ms. or Mr. Skidmore
12:06:34 16 is?
12:06:38 17 A. I believe it refers to Tom Skidmore.
12:06:40 18 Q. Do you know what position Tom
12:06:40 19 Skidmore held in August of 1984?
12:06:42 20 A. I believe he was an engineer in R&D,
12:06:44 21 in the Semi-Works.
12:06:48 22 Q. Do you know if he's still employed by
12:06:50 23 Philip Morris?
12:06:50 24 A. I believe he's retired.
12:06:54 25 Q. How about Mr. K.S. Burns? Do you

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1 Donaher - Highly Confidential - Trade Secret
12:06:58 2 know who that is?
12:07:00 3 A. Ken Burns.
Page: 84
12:07:02 4 Q. Do you know who position he held in
12:07:04 5 1984?
12:07:08 6 A. He probably was a manager in process
12:07:12 7 development.
12:07:14 8 Q. Is process development part of R&D?
12:07:16 9 A. Yes, it is.
12:07:20 10 Q. Did you ever work with Mr. Burns?
12:07:20 11 A. Yes, I did.
12:07:20 12 Q. In what context did you work with
12:07:22 13 Mr. Burns?
12:07:24 14 A. I believe he was my manager for a
12:07:26 15 short time.

12:07:26 16 Q. When was that?
12:07:34 17 A. Probably in the '83, '84 time frame.
12:07:38 18 Early '84.
12:07:42 19 Q. How about Mr. Skidmore? Did you work
12:07:44 20 with him?
12:07:48 21 A. Basically the same context that I
12:07:52 22 worked with Mr. Medak, that if we needed some
12:07:54 23 expertise for TLA.
12:07:56 24 Q. Could you turn to page 2 of Exhibit
12:07:58 25 2.

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1 Donaher - Highly Confidential - Trade Secret
12:08:00 2 (Witness complies.)
Page: 85
12:08:02 3 Q. It's Bates stamped PB 109885,
12:08:06 4 production number 2031436009. Is that chart
12:08:14 5 there that is table 1, "Nicotine in cigarettes
12:08:18 6 versus total alkaloids in filler," do you see
12:08:22 7 that?
12:08:22 8 A. Yes.
12:08:24 9 Q. On the -- listed under "Cigarette
12:08:30 10 data" are a series of measurements. Are those
12:08:38 11 measurements part of the routine testing that you
12:08:40 12 were referring to before when I asked you about
12:08:42 13 cigarette component testing?
12:08:42 14 MR. MURPHY: Objection to form. You
12:08:46 15 can answer the question.
12:08:48 16 A. Which measurements are you asking me

12:08:50 17 about?

12:08:50 18 Q. The ones under "Cigarette data."

12:09:08 19 A. The only one that I don't recall

12:09:10 20 specifically seeing is nicotine per puff. And

12:09:16 21 these are -- there are other ones that are quite

12:09:22 22 commonly done in addition to these. These are

12:09:22 23 not the only ones that I would consider, but they

12:09:26 24 are some of them, yes.

12:09:32 25 Q. I draw your attention to the third

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1 Donaher - Highly Confidential - Trade Secret

12:09:34 2 line of that table 1. There's a word under

12:09:44 3 "Total alkaloid in filler" -- strike that. I

12:09:46 4 have a preceding question.

12:09:46 5 The first line under "Cigarette

12:09:48 6 data," where it says "TPM, milligram per

12:09:52 7 cigarette," what does that refer to?

12:09:54 8 A. I believe TPM stands for total

12:09:56 9 particulate matter.

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12:10:02 10 Q. What is total particulate matter?

12:10:04 11 A. I don't really know what it is. It's

12:10:08 12 a number to me.

12:10:12 13 Q. Back up to the third line or second

12:10:14 14 line of data on table 1, underneath "Total

12:10:22 15 alkaloid and filler." The first line of data is

12:10:24 16 beside a parenthetical, "DWB percentage." Do you

12:10:30 17 understand DWB to mean dry weight basis?

12:10:34 18 MR. MURPHY: Objection to form. Ted,

12:10:34 19 I just have the same issue here that I had with
12:10:36 20 the last document.

12:10:38 21 MR. KILLORY: Independent of this
12:10:38 22 document.

12:10:38 23 MR. MURPHY: The witness having
12:10:40 24 testified she's not seen this particular document
12:10:42 25 before, are your questions directed at whether

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1 Donaher - Highly Confidential - Trade Secret
12:10:46 2 these terms in these documents have any
12:10:48 3 independent meaning to this witness? Because if
12:10:50 4 those are your questions, I will let her answer
12:10:52 5 that.

Page: 87

12:10:54 6 Q. Does -- independent of this document,
12:10:56 7 does DWB have any meaning to you?

12:10:58 8 A. If it was attached to some sample --
12:11:00 9 some data it would mean dry weight basis. But as
12:11:06 10 a standalone, no, it doesn't mean anything.

12:11:10 11 Q. Beside the "Predicted" line, under
12:11:12 12 "Total alkaloid in filler," the second line, do
12:11:12 13 you see where I'm referring to?

12:11:14 14 A. Yes.

12:11:14 15 Q. There's a double asterisk, footnote,
12:11:24 16 and if you look to the bottom of the page, the
12:11:26 17 double asterisk footnote says, "Calculated using
12:11:28 18 the blend formula in blend component study number
12:11:32 19 9 alkaloid results."

12:11:38 20 Are you familiar with blend component
12:11:42 21 study number 9?
12:11:42 22 A. I'm aware that it was done, that it
12:11:46 23 exists.
12:11:46 24 Q. Do you know what the subject matter
12:11:48 25 of study number 9 was?

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1 Donaher - Highly Confidential - Trade Secret
12:11:52 2 A. I can't recall exact specifics, but
12:11:56 3 it would have been similar to blend component
12:11:58 4 study number 10 in general purpose and content.
Page: 88
12:12:04 5 Q. And blend component study number 10
12:12:06 6 was the one you authored; is that correct?
12:12:08 7 MR. MURPHY: Objection to form.
12:12:10 8 A. It was a test that I conducted and
12:12:14 9 then wrote the report, yes.
12:12:24 10 Q. Do you have any understanding
12:12:26 11 independent of this document as to whether blend
12:12:30 12 component study number 9 provided a basis for
12:12:34 13 predicting the percentage alkaloid content in
12:12:38 14 tobacco filler at a given stage of cigarette
12:12:40 15 processing?
12:12:42 16 MR. MURPHY: Objection to form. You
12:12:44 17 can answer the question, if you understand it.
12:12:48 18 A. My understanding of the premise of
12:12:50 19 any of these blend component studies was to
12:12:52 20 provide a full baseline of data on each of the
12:12:56 21 individual blend components.

12:13:00 22 Q. Let me repeat, do you have any
12:13:02 23 understanding as to whether the data in blend
12:13:04 24 component study number 9 would provide the basis
12:13:10 25 for predicting the percentage alkaloid content in

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1 Donaher - Highly Confidential - Trade Secret
12:13:12 2 the tobacco filler at a given stage in the
12:13:16 3 cigarette manufacturing process?
12:13:18 4 MR. MURPHY: Objection to form. I
12:13:20 5 think the question is ambiguous. But you can
12:13:22 6 answer it if you understand it.
12:13:24 7 A. The blend component study provided
12:13:26 8 data of the filler exiting the silo, is my
12:13:38 9 understanding. So that is not different stages
12:13:40 10 in the primary. So it would not provide a basis
12:13:46 11 for predicting that. It would simply state what
12:13:50 12 the alkaloids level was of the finished filler.

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12:13:54 13 Q. Do you know how many blend component
12:13:56 14 studies there were?
12:14:02 15 A. 11, 12. I don't know.
12:14:04 16 Q. Some were done after your blend
12:14:06 17 component study number 10?
12:14:08 18 A. I think so.
12:14:08 19 Q. Did you do any of the other ones,
12:14:10 20 other studies besides blend component study
12:14:12 21 number 10?
12:14:14 22 A. No, I didn't.

12:14:16 23 REQ Q. Do you know whether you have a copy
12:14:18 24 of blend component study number 10 in your
12:14:20 25 files?

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1 Donaher - Highly Confidential - Trade Secret
12:14:22 2 A. I believe I do.
12:14:26 3 MR. KILLORY: We would like to make a
12:14:28 4 request for that blend component study as well as
12:14:32 5 the others in the series of blend component
12:14:32 6 studies that my understanding is that they are
12:14:36 7 within the document request. And so we would
12:14:38 8 like to formally make the request on the record.
12:14:40 9 MR. MURPHY: Your request is noted.

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12:14:46 10 Q. Do you know if Philip Morris still
12:14:50 11 conducts the kind of testing that went into the
12:14:54 12 blend component study that you prepared?
12:14:58 13 MR. MURPHY: Objection to form. You
12:15:00 14 can answer the question.
12:15:02 15 A. I don't know what kind of testing
12:15:02 16 that you're actually referring to.
12:15:04 17 Q. What kind of testing did you do for
12:15:06 18 blend component study number 10?
12:15:10 19 A. Took the different types of tobacco,
12:15:16 20 processed it into filler, processed it into
12:15:16 21 cigarette, and ran a routine battery of tests,
12:15:20 22 and collected data.
12:15:28 23 Q. And your recollection is that those
12:15:32 24 tests -- strike that.

12:15:42 25

Do you know whether those tests --

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1 Donaher - Highly Confidential - Trade Secret

12:15:42 2 when I say those types of tests, the routine

12:15:44 3 battery of tests you've just referred to, are

12:15:46 4 still conducted by Philip Morris through the date

12:15:50 5 of March 31, 1994?

12:15:52 6 MR. MURPHY: March 24.

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12:15:54 7 Q. March 24, 1994?

12:15:56 8 MR. MURPHY: Objection to form. You

12:15:58 9 can answer.

12:16:00 10 A. Routine chemical analysis, smoking

12:16:04 11 analysis, is done on a regular basis in the

12:16:10 12 company.

12:16:24 13 Q. Do you know whether that routine

12:16:26 14 testing includes the type of testing you did for

12:16:28 15 blend component study number 10?

12:16:30 16 MR. MURPHY: Objection to form.

12:16:42 17 A. The type of testing and studying that

12:16:48 18 was done in blend component study 10 or 9 is

12:16:50 19 routine physical chemical smoke evaluation of

12:16:58 20 tobacco. That's the normal course of doing

12:16:58 21 business.

12:16:58 22 Q. So your understanding is that that

12:17:00 23 does continue today?

12:17:02 24 MR. MURPHY: Objection to form.

12:17:06 25 Misstates her testimony. You can answer the

1 Donaher - Highly Confidential - Trade Secret

12:17:08 2 question.

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12:17:10 3 Q. You can answer.

12:17:12 4 A. The company analyzes cigarettes and

12:17:18 5 tobacco in the normal course of doing business.

12:17:20 6 Q. And do you have an understanding as

12:17:22 7 to whether that type of testing you did for study

12:17:30 8 number 10, that type of testing continues today?

12:17:32 9 MR. MURPHY: I object to the form of

12:17:34 10 the question. You can answer.

12:17:36 11 A. When you say "that type of testing,"

12:17:40 12 if you're referring to smoke analysis, routine

12:17:42 13 filler analysis, physical evaluation, yes, it is

12:17:46 14 done on a regular basis.

12:17:48 15 Q. And the smoke analysis you did for

12:17:54 16 study number 10 involved testing for what?

12:17:56 17 A. I recall the TPM, the tar, the

12:18:02 18 nicotine, puff count, your CO, your NO. It's an

12:18:12 19 exhaustive list. I don't recall what all the

12:18:12 20 tests were.

12:18:14 21 Q. Did you do any testing for nicotine

12:18:16 22 levels in the smoke?

12:18:18 23 MR. MURPHY: I object to the form of

12:18:20 24 the question. You can answer it.

12:18:24 25 A. I believe nicotine was one --

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12:18:28 2 nicotine in smoke was one of the analyses that

12:18:30 3 was completed, yes.

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12:18:32 4 Q. And did you do the analyses?

12:18:32 5 A. No, I did not.

12:18:34 6 Q. Did you see that analysis?

12:18:34 7 A. No, I did not. I saw the numbers.

12:18:42 8 Q. Did that analysis form the basis for
12:18:42 9 part of your study?

12:18:42 10 MR. MURPHY: I object to the form of
12:18:44 11 the question. Perhaps I interrupted your
12:18:48 12 question. If I did, I apologize, Ted.

12:18:50 13 Q. Did the analysis of nicotine that you
12:18:56 14 saw form the basis for any part of study number
12:18:58 15 10 that you authored?

12:18:58 16 A. The purpose of the study was to
12:19:04 17 collect data on all the blend components. That
12:19:06 18 was one of the measurements that was taken.

12:19:08 19 Q. So the nicotine analysis from the
12:19:12 20 smoke that you saw was included in your study
12:19:20 21 number 10; is that correct?

12:19:22 22 MR. MURPHY: I object to the form.
12:19:24 23 You can answer.

12:19:24 24 A. It was one of the measurements taken,
12:19:26 25 yes.

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12:19:28 2 Q. Not just taken. My question was, was

12:19:30 3 that measurement then included in your study

12:19:32 4 number 10.

12:19:34 5 MR. MURPHY: I object to the form of

12:19:34 6 the question. Maybe it would just help, Ted, if

12:19:38 7 you could say what you mean by "included."

12:19:42 8 Q. Do you understand the word "included"

12:19:44 9 in the context of what it included in a study?

12:19:46 10 A. The study was a reporting of data.

12:19:52 11 Q. And did that study include the data

12:19:52 12 as to nicotine in smoke?

12:19:54 13 A. I believe so, yes.

12:19:56 14 Q. Did that study include data as to

12:19:58 15 nicotine in the rod?

12:20:06 16 A. I'm not -- I'm not aware of nicotine

12:20:06 17 being measured in the rod, no.

12:20:08 18 Q. Did that study include data as to tar

12:20:12 19 in the rod?

12:20:14 20 MR. MURPHY: I object to the form of

12:20:14 21 the question. I don't understand what you mean.

12:20:18 22 But you can answer the question.

12:20:22 23 A. I don't understand what you mean.

12:20:22 24 Q. What don't you understand about the

12:20:24 25 question?

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1 Donaher - Highly Confidential - Trade Secret

12:20:26 2 A. I don't understand what "tar in the
12:20:26 3 rod" means.

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12:20:28 4 Q. What is tar?

12:20:30 5 A. Tar is something measured in
12:20:32 6 cigarette smoke.

12:20:32 7 Q. Is there any measurement for tar in
12:20:34 8 the rod that you're aware of?

12:20:36 9 A. Are you talking about while it's not
12:20:40 10 being smoked?

12:20:40 11 Q. That's right.

12:20:42 12 A. No, I'm not.

12:20:42 13 Q. Were you -- were measurements for tar
12:20:46 14 in the cigarette smoke included in study number
12:20:50 15 10?

12:20:54 16 A. Yes, the data was put in the report.

12:21:02 17 THE VIDEO OPERATOR: This is the end
12:21:02 18 of videotape number 1. The time on the screen is
12:21:06 19 12:21:08. We're going off the record.

12:21:08 20 (Discussion off the record.)

12:22:28 21 THE VIDEO OPERATOR: This is
12:22:28 22 videotape number 2, the continuation of the
12:22:34 23 deposition of Denise Donaher. The time on the
12:22:38 24 screen is 12:22:37. You're on the record.

12:22:40 25 Q. In the context of preparing study

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1 Donaher - Highly Confidential - Trade Secret

12:22:42 2 number 10, did you see any data relating to the

12:22:50 3 level of nicotine in the filler?

12:22:52 4 MR. MURPHY: I object to the form of

12:22:52 5 the question. You can answer.

12:22:58 6 A. I don't recall seeing any data on

12:23:00 7 nicotine in filler, no.

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12:23:08 8 Q. In the context of preparing study

12:23:12 9 number 10, do you recall seeing any data

12:23:20 10 regarding nicotine other than the data regarding

12:23:20 11 nicotine in the smoke to which you've previously

12:23:22 12 testified?

12:23:24 13 MR. MURPHY: I object to the form of

12:23:24 14 the question. You can answer.

12:23:30 15 A. I wouldn't have had any reason to be

12:23:30 16 looking at any data in preparation for doing the

12:23:34 17 blend component study. I mean, the blend

12:23:34 18 component study is simply a matter of processing

12:23:40 19 the tobacco and collecting the data.

12:23:42 20 So looking at data was not part of

12:23:44 21 any preparation.

12:23:46 22 Q. So you didn't look at any of the data

12:23:46 23 you put in the study?

12:23:52 24 A. You said in preparing to do the

12:23:52 25 study.

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12:23:52 2 Q. In preparing the study. In other

12:23:56 3 words, in creating the study.

12:24:00 4 MR. MURPHY: I object to the form.
12:24:04 5 A. Your question doesn't make sense.
12:24:04 6 Q. Okay. You previously testified as to
12:24:16 7 measurements of nicotine in the smoke that you
12:24:16 8 believe you saw in the context of preparing study
12:24:22 9 number 10; is that correct?
12:24:24 10 A. You're referring to the report?
12:24:26 11 Q. That's right.
12:24:28 12 A. Yes. That's correct.
12:24:28 13 Q. And my question is simply, do you
12:24:32 14 recall seeing any other measurements of nicotine
12:24:36 15 in the context of preparing the study?
12:24:38 16 A. No, I didn't.
12:24:48 17 Q. Is there a distinction between
12:24:50 18 "report" and "study" in this context?
12:24:54 19 MR. MURPHY: I object to the form of
12:24:54 20 the question.
12:24:54 21 Q. And I'm referring to the tobacco --
12:24:58 22 the component blend study.
12:25:00 23 MR. MURPHY: I still object to the
12:25:00 24 form. But if you understand the question, you
12:25:02 25 can answer.

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1 Donaher - Highly Confidential - Trade Secret
12:25:02 2 A. To me there is a difference.
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12:25:04 3 Q. What is the difference?
12:25:08 4 A. To me the study is the process by

12:25:12 5 which the tobacco was sampled, processed,
12:25:18 6 cigarettes made, and the tests submitted for
12:25:20 7 testing, and testing; and the report is the
12:25:28 8 reporting of what -- of the results, meaning the
12:25:28 9 data that was collected.

12:25:32 10 Q. So the item that's listed in Exhibit
12:25:36 11 1 on page 52, "Tobacco properties application
12:25:40 12 blend component study number 10," is that the
12:25:46 13 report that you're referring to?

12:25:46 14 MR. MURPHY: I object to the form of
12:25:48 15 the question. You can answer.

12:25:54 16 A. The document is the report, yes.

12:26:08 17 Q. Would you go back to Exhibit Number
12:26:36 18 1, please. Could you turn to page 4 of Exhibit
12:26:36 19 Number 1, which is Bates stamped PA 91833,
12:26:40 20 production number 20222222013.

12:26:54 21 (Witness complies.)

12:26:54 22 Q. At the bottom of that page there is
12:26:56 23 an equation that's introduced by the following
12:27:00 24 sentence.

12:27:00 25 "The percent nicotine transfer to

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1 Donaher - Highly Confidential - Trade Secret
12:27:04 2 smoke is calculated by the following equation.
12:27:06 3 Percentage nicotine transfer equals" -- it will
12:27:12 4 made too muddy a record for me to read it in.
12:27:18 5 The document is an exhibit in the deposition.
12:27:20 6 Do you see that?

12:27:20 7 A. Yes.

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12:27:20 8 Q. Independent of this document, have

12:27:24 9 you ever seen an equation like that before?

12:27:26 10 A. No.

12:27:26 11 Q. Independent of the document, looking

12:27:26 12 at it here today, do you have any understanding

12:27:28 13 of that equation?

12:27:28 14 A. No.

12:27:36 15 Q. So I take it sitting here today you

12:27:38 16 do not have any understanding as to whether that

12:27:40 17 equation is accurate or not?

12:27:44 18 A. I don't have any idea one way or the

12:27:44 19 other.

12:27:54 20 Q. If you could turn to the next page,

12:27:54 21 page 5.

12:27:56 22 (Witness complies.)

12:27:58 23 Q. The first sentence reads, "In the

12:28:00 24 calculation," referring to the equation in the

12:28:04 25 preceding page, "In the calculation an assumption

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1 Donaher - Highly Confidential - Trade Secret

12:28:06 2 is made that percent alkaloids is composed of 100

12:28:08 3 percent nicotine."

12:28:14 4 Independent of this document, do you

12:28:16 5 have any understanding as to alkaloids being

12:28:20 6 composed essentially of 100 percent nicotine?

12:28:24 7 A. I don't have any understanding one

12:28:26 8 way or the other.

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12:28:28 9 Q. So you have no understanding as to
12:28:30 10 the percentage of nicotine in alkaloids?
12:28:34 11 A. That's correct.
12:28:36 12 Q. What are the other alkaloids besides
12:28:38 13 nicotine?
12:28:38 14 A. I don't know any names. I just know
12:28:42 15 that nicotine is considered an alkaloid.
12:28:52 16 Q. Looking back at the equation on page
12:28:58 17 4, that equation contains a number of variables.
12:29:08 18 Do you recognize any of those variables as items
12:29:08 19 that were included in your study number 10?
12:29:14 20 MR. MURPHY: I object to the form of
12:29:16 21 the question. I think it might be a clearer
12:29:22 22 record here, Ted, if we could ask her first
12:29:24 23 whether the items in this document that she has
12:29:28 24 seen before, and in an equation -- that she has
12:29:30 25 not seen before, and in an equation that she has

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1 Donaher - Highly Confidential - Trade Secret
12:29:34 2 not seen before, are items that she has an
12:29:34 3 independent recognition of, one by one.
Page: 101
12:29:42 4 Q. Let's start with my question. Is
12:29:44 5 there any item in that equation that, sitting
12:29:52 6 here today, you understand was included, that the
12:30:00 7 data -- the variables, excuse me, was included in
12:30:02 8 your study number 10?
12:30:04 9 MR. MURPHY: I object to the form of

12:30:04 10 the question. I don't understand it. You can
12:30:08 11 answer the question if you understand it.
12:30:12 12 A. This equation I'm looking at?
12:30:14 13 Q. That's right.
12:30:14 14 A. I testified previously that nicotine
12:30:18 15 in smoke I believe was included. Tobacco weight
12:30:22 16 was most certainly included in the blend
12:30:24 17 component studies, because all of the properties
12:30:28 18 are related to the weight of the tobacco.
12:30:30 19 And I believe percent alkaloids was a
12:30:32 20 routine test that was --
12:30:36 21 Q. And when the tobacco weight, which is
12:30:38 22 expressed in milligrams per cigarette, is that
12:30:44 23 the usual way of referring to tobacco weight in a
12:30:50 24 cigarette?
12:30:50 25 MR. MURPHY: I object to the form of

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1 Donaher - Highly Confidential - Trade Secret
12:30:50 2 the question.
Page: 102
12:30:50 3 Q. You can answer.
12:30:52 4 A. It is one way.
12:31:00 5 Q. Was the percentage of alkaloids in
12:31:04 6 filler part of your study number 10?
12:31:06 7 MR. MURPHY: I object to the form of
12:31:08 8 the question. I think it's been asked and
12:31:08 9 answered. You can answer the question.
12:31:12 10 A. I believe so.

12:31:34 11 Q. Do you know if the percentage of
12:31:36 12 alkaloids in filler is part of the routine
12:31:38 13 testing?
12:31:40 14 MR. MURPHY: Objection to form.
12:31:44 15 A. Which routine?
12:31:46 16 Q. You referred earlier to routine
12:31:46 17 testing. Do you know if testing for percentage
12:31:50 18 of alkaloid in filler is routinely tested?
12:31:52 19 MR. MURPHY: I object to the form.
12:31:54 20 You can answer.
12:31:58 21 A. If you're testing filler it probably
12:32:00 22 would be tested, yes.
12:32:02 23 Q. Do you know whether the level of
12:32:06 24 nicotine transfer from filler to smoke increases
12:32:14 25 as the level of tar increases?

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1 Donaher - Highly Confidential - Trade Secret
12:32:16 2 MR. MURPHY: I object to the form of
12:32:20 3 the question. You can answer the question.
12:32:22 4 A. I don't have any knowledge one way or
12:32:24 5 the other.
Page: 103
12:32:30 6 Q. Do you have any understanding as to
12:32:32 7 any relationship between tar levels and alkaloid
12:32:34 8 levels?
12:32:38 9 MR. MURPHY: I object to the form of
12:32:38 10 the question. It's exceptionally sweepingly
12:32:42 11 broad. Can you be a little bit more specific?
12:32:46 12 Q. Do you understand the question?

12:32:48 13 A. Either way, I have no knowledge one
12:32:50 14 way or the other.
12:32:52 15 Q. Whether specific or broad, you don't
12:32:52 16 know?
12:32:52 17 A. Right. That's right.
12:32:56 18 MR. MURPHY: That takes care of
12:32:58 19 that.
12:33:00 20 Q. That's a way of short-circuiting the
12:33:00 21 process. Very good. Let me follow up. You have
12:33:10 22 no understanding as to any correlation between
12:33:12 23 the level of tar in a cigarette and the level of
12:33:14 24 nicotine in that cigarette?
12:33:16 25 MR. MURPHY: I object to the form of

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1 Donaher - Highly Confidential - Trade Secret
12:33:16 2 the question. You can answer the question.
12:33:20 3 A. I don't have any knowledge one way or
12:33:22 4 the other.
Page: 104
12:33:32 5 Q. Do you know what Galaxy cigarette
12:33:36 6 brand is?
12:33:38 7 A. No, I never heard of it.
12:34:02 8 Q. Do you have any understanding as to
12:34:08 9 whether filters in a cigarette have any role in
12:34:10 10 the level of tar that results in the smoke of the
12:34:10 11 cigarette?
12:34:12 12 A. I have basically no knowledge about
12:34:14 13 cigarette design or filters or any of those

12:34:16 14 relationships.

12:34:18 15 Q. So your answer to my question is no?

12:34:20 16 A. The answer is no.

12:34:30 17 Q. Would you turn to page 6 of Exhibit

12:34:40 18 Number 1. PA 818335, production number

12:34:40 19 20222222015.

12:34:48 20 (Witness complies.)

12:34:52 21 Q. It's headed by a figure 2, which is

12:34:56 22 labeled "Percent nicotine transfer versus tar, 85

12:35:02 23 millimeter regular CI November 1984," and below

12:35:02 24 it is a plot with "Percentage nicotine transfer"

12:35:06 25 in the vertical left-hand side and "Tar" across

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1 Donaher - Highly Confidential - Trade Secret

12:35:14 2 the horizontal.

12:35:16 3 MR. OTERO: Ted, I think you put one

12:35:20 4 too many twos in when reading the number. Let's

12:35:26 5 not do it over, though.

12:35:26 6 MR. MURPHY: The correct Bates

12:35:30 7 number, Ted, I'll do it for you. The correct

12:35:36 8 Bates number is 2022222015.

12:35:36 9 MR. KILLORY: But the question is,

12:35:38 10 can you repeat that now without looking.

12:35:40 11 MR. MURPHY: I certainly can't.

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12:35:48 12 Q. On that chart, do you have any

12:35:50 13 understanding of what that chart represents?

12:36:00 14 A. To me it looks like the same chart

12:36:02 15 that I saw before; and I'll give the same answer

12:36:04 16 I gave before, that I don't know what percent
12:36:10 17 nicotine transfer is, and I don't have any idea
12:36:14 18 what those relationships would indicate, good,
12:36:16 19 bad or indifferent.
12:36:20 20 Q. So independent of any prior exposure
12:36:24 21 to this document, which you have testified you
12:36:26 22 have never seen before, you don't have any
12:36:28 23 independent understanding of what the line on
12:36:30 24 that chart indicates?
12:36:32 25 A. That's right.

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12:36:52 2 Q. Have you ever heard of a filter that
12:36:52 3 filters out tar but not nicotine?
12:36:56 4 A. No.
12:36:58 5 MR. MURPHY: I object to the form of
12:36:58 6 the question. I just remind you, Denise to try
12:37:10 7 to give me an opportunity, after he asks his
12:37:12 8 question, to object if it's objectionable.
12:37:16 9 Q. Could you turn to page 918340, which
12:37:20 10 is page 11 of Exhibit 1.
12:37:26 11 (Witness complies.)
12:37:26 12 Q. And the production number is 202,
12:37:32 13 four twos, 2020.
12:37:40 14 MR. MURPHY: Got it.
12:37:50 15 Q. If you look at the last paragraph on
12:37:54 16 the page, it deals with -- well, let me read it.

12:38:00 17 "These results verify the results of Chaplin and
12:38:02 18 Minor in that the additional fertilization with
12:38:04 19 potassium decreases nicotine delivery to smoke
12:38:08 20 while maintaining roughly equivalent alkaloid
12:38:12 21 levels."

12:38:12 22 Do you have any understanding as to
12:38:14 23 that statement?

12:38:16 24 MR. MURPHY: I object to the form of
12:38:18 25 the question. Are you asking her if she has an

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1 Donaher - Highly Confidential - Trade Secret
12:38:20 2 understanding independent, again, of this
12:38:22 3 document?

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12:38:24 4 Q. Sitting here, reading that
12:38:24 5 statement. You have testified you have not seen
12:38:28 6 this document before, so it's independent of the
12:38:30 7 document itself. Do you have any understanding
12:38:32 8 sitting here reading that today what that means?

12:38:34 9 A. It doesn't mean anything to me.

12:38:38 10 MR. MURPHY: I would just read into
12:38:40 11 the record here, Ted, the next sentence, which
12:38:42 12 you have omitted to read.

12:38:44 13 MR. KILLORY: I'll read it. "Figure
12:38:46 14 5 also shows a decrease in tar with increasing
12:38:48 15 potassium fertilization. These results also
12:38:54 16 agree with Mr. G. Keritsis's," with a citation to
12:39:00 17 reference number 6, "work on salt casings where
12:39:04 18 spraying potassium salts onto filler decreased

12:39:06 19 nicotine and tar deliveries."
12:39:14 20 Do you have any understanding based
12:39:14 21 on your work as to the meaning of that
12:39:18 22 paragraph?
12:39:20 23 MR. MURPHY: Object to the form. You
12:39:22 24 can answer.
12:39:36 25 A. I'm not familiar with Keritsis's

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1 Donaher - Highly Confidential - Trade Secret
12:39:40 2 work. No, I don't know what it means.
Page: 108
12:39:44 3 Q. Do you know who Mr. G Keritsis is?
12:39:46 4 A. Yes, I do.
12:39:48 5 Q. Is he a Philip Morris employee?
12:39:50 6 A. I believe he's retired.
12:39:54 7 Q. In what department did he work when
12:39:54 8 he worked for Philip Morris?
12:39:58 9 A. Research and development, at the time
12:39:58 10 that I knew him.
12:40:00 11 Q. Was that at the time you were in
12:40:04 12 research and development, did he work in R&D?
12:40:06 13 A. He did, yes.
12:40:10 14 Q. Do you know whether removing
12:40:10 15 potassium nitrate would alter the delivery of
12:40:16 16 nicotine?
12:40:16 17 MR. MURPHY: I object to the form.
12:40:18 18 You can answer.
12:40:20 19 A. I don't have any knowledge one way or

12:40:22 20 the other.

12:40:50 21 Q. Turn to page Bates stamp 918346.

12:40:52 22 (Witness complies.)

12:40:54 23 Q. Which is page number 17 of Exhibit

12:41:00 24 Number 1, and the production number is 202, four

12:41:04 25 twos, 2026. The first sentence reads, "The

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1 Donaher - Highly Confidential - Trade Secret

12:41:18 2 majority of the blend components fall in the

12:41:18 3 curve except ET as shown on figure 7. This high

12:41:22 4 transfer of nicotine to smoke for ET is

12:41:24 5 consistent in all four blend component studies."

12:41:28 6 Do you have any understanding

12:41:30 7 independent of this document as to ET having a

12:41:36 8 higher nicotine transfer rate --

12:41:38 9 MR. MURPHY: I object to the form of

12:41:40 10 the question.

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12:41:40 11 Q. -- in smoke?

12:41:42 12 MR. MURPHY: Lack of foundation. You

12:41:44 13 can answer the question.

12:41:46 14 A. I never heard of the terminology

12:41:48 15 "nicotine transfer rate" before. So no, I don't

12:41:50 16 have any understanding about ET.

12:41:52 17 Q. How about -- apart from not having

12:41:58 18 heard the terminology, you don't understand what

12:42:00 19 it means, "nicotine transfer rate"? You don't

12:42:04 20 understand that phrase?

12:42:04 21 A. I don't.

12:42:18 22 Q. You testified earlier that there are
12:42:20 23 measures of nicotine in the smoke; correct?
12:42:24 24 MR. MURPHY: I object to the form.
12:42:24 25 You can answer the question.

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1 Donaher - Highly Confidential - Trade Secret

12:42:26 2 A. I'm aware of the standard smoking
12:42:30 3 test of which nicotine in smoke is one of the
12:42:30 4 components to be measured.

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12:42:32 5 Q. Are you aware of tests for nicotine
12:42:36 6 content in the filler?

12:42:38 7 MR. MURPHY: I object again to the
12:42:38 8 form of the question. You can answer.

12:42:48 9 A. I'm aware that there is such a test.
12:42:50 10 I don't know anything about it.

12:42:50 11 Q. Are you aware of any testing that
12:42:52 12 compares the level of nicotine in the filler with
12:42:56 13 the level, percentage of nicotine in the smoke?

12:42:58 14 MR. MURPHY: I object to the form of
12:43:00 15 the question. You can answer.

12:43:04 16 A. I'm not aware of any, no.

12:43:08 17 Q. You never did any such testing in
12:43:12 18 creating study number 10?

12:43:14 19 MR. MURPHY: I object to the form.
12:43:18 20 You can answer the question.

12:43:18 21 A. I can't recall every analysis that
12:43:22 22 was included in the blend component study. We

12:43:26 23 did the analysis and I reported the data.
12:43:44 24 Q. If you could turn to the next page,
12:43:44 25 page 18 of Exhibit 1.

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1 Donaher - Highly Confidential - Trade Secret
12:43:54 2 (Witness complies.)
Page: 111
12:44:08 3 Q. Have you had a chance to look at that
12:44:10 4 page, Ms. Donaher?
12:44:12 5 MR. MURPHY: Do you want her to read
12:44:14 6 the page?
12:44:14 7 MR. KILLORY: I'm not going to ask
12:44:16 8 detailed questions.
12:44:16 9 Q. If you could just familiarize
12:44:18 10 yourself with the contents of that page.
12:44:34 11 (Witness complies.)
12:44:54 12 Q. The sentence at the end of the first
12:44:56 13 paragraph reads, "Since expanding burley filler
12:44:58 14 by the ET process does not sufficiently enhance
12:45:02 15 nicotine transfer to smoke, it does not appear to
12:45:04 16 be a useful component in a low tar, high nicotine
12:45:08 17 cigarette."
12:45:10 18 Are you of any -- aware of any effort
12:45:12 19 by Philip Morris to develop a low tar, high
12:45:16 20 nicotine cigarette?
12:45:16 21 MR. MURPHY: I object to the form of
12:45:18 22 the question. You can answer.
12:45:20 23 A. I'm not aware of any work along those
12:45:20 24 lines.

12:45:22 25 Q. You've never heard of any work along

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12:45:22 2 those lines?

12:45:24 3 A. No.

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12:45:34 4 Q. Do you know whether the level of

5 pH -- what's the level of pH of a filler?

12:45:40 6 MR. MURPHY: I object to the form of

12:45:42 7 the question. I think it may be just

12:45:46 8 scientifically imprecise. If you understand the

12:45:50 9 question, you can answer it, but perhaps you can

12:45:52 10 rephrase it, Ted.

12:45:56 11 MR. KILLORY: I'm sorry, I

12:45:56 12 interrupted you.

12:46:00 13 Q. Let's turn to page 20 of Exhibit 1,

12:46:00 14 PA 918349, production numbers 202, four twos,

12:46:08 15 2029.

12:46:12 16 The second paragraph reads, "The

12:46:16 17 filler pH for the various cigarette models are

12:46:18 18 also included in figure 8. A possible

12:46:20 19 explanation for the higher percent nicotine

12:46:22 20 transfer for the high alkaloid bright ET

12:46:26 21 cigarettes is the higher pH of its filler when

12:46:28 22 compared with its unexpanded control or the DIET

12:46:32 23 expanded cigarettes."

12:46:34 24 MR. MURPHY: Why don't you read the

12:46:36 25 rest of it.

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12:46:36 2 MR. KILLORY: I am. "This same
12:46:38 3 reasoning can be made for higher nicotine
12:46:40 4 transfer to smoke for the ET cigarettes in the
12:46:44 5 blend component studies, but their pH has not
12:46:48 6 been measured. The pH of the high alkaloid
12:46:48 7 burley ET changed less than the bright and may
12:46:50 8 explain why its nicotine transfer is lower. The
12:46:54 9 effect of filler pH will be discussed further at
12:46:56 10 a later portion of this report."

12:46:58 11 Have you heard anything about the
12:47:02 12 relationship between the pH level of the filler
12:47:04 13 and the nicotine transfer resulting from that
12:47:08 14 filler?

12:47:08 15 MR. MURPHY: I object to the form.
12:47:10 16 You can answer.

12:47:12 17 A. No, I haven't.

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12:47:16 18 Q. Did any of your work in preparing
12:47:18 19 study number 10 address the level of pH of the
12:47:20 20 filler?

12:47:24 21 MR. MURPHY: I object to the form of
12:47:24 22 the question. You can answer it.

12:47:28 23 A. I don't recall whether filler pH was
12:47:32 24 one of the -- one way or the other, whether it
12:47:32 25 was one of the tests that was measured in the

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12:47:34 2 blend component study.

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12:47:46 3 Q. What are additives, in the context of

12:47:52 4 preparation of RL? By that I mean reconstituted

12:47:56 5 tobacco.

12:47:56 6 MR. MURPHY: I object to the form of

12:47:56 7 the question. But you can answer it.

12:48:04 8 A. My definition of "additive" is

12:48:08 9 anything that's not come from the tobacco.

12:48:12 10 Q. Do you know what some of the

12:48:14 11 additives are that go into RL?

12:48:16 12 A. Flavors. Preservatives.

12:48:24 13 Q. How about in the larger cigarette

12:48:26 14 manufacturing process? Are you aware of any

12:48:28 15 other additives as you have defined them?

12:48:30 16 MR. MURPHY: I object to the form.

12:48:32 17 You can answer.

12:48:34 18 A. I don't have any specific knowledge

12:48:36 19 of additives used.

12:48:42 20 Q. Do you have any general knowledge of

12:48:42 21 additives in the cigarette manufacturing process,

12:48:46 22 as you have defined "additives"?

12:48:46 23 A. Flavors.

12:48:48 24 Q. Beyond flavors.

12:48:52 25 MR. MURPHY: By "additives in the

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12:48:56 2 cigarette manufacturing process" you're

12:48:56 3 referring, Ted, here, to other than the RL

12:48:58 4 process?

12:48:58 5 MR. KILLORY: That's right.

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12:49:00 6 Q. The larger cigarette manufacturing

12:49:02 7 process.

12:49:04 8 MR. MURPHY: Well, "the larger

12:49:06 9 cigarette manufacturing process" is still a

12:49:10 10 terminology that I think is a bit vague.

12:49:16 11 MR. KILLORY: Cigarette --

12:49:16 12 MR. MURPHY: Cigarette manufacturing

12:49:16 13 other than RL manufacturing?

12:49:16 14 MR. KILLORY: It was intended to be

12:49:18 15 inclusive of the entire process of manufacturing

12:49:20 16 a cigarette.

12:49:22 17 Q. You had earlier testified as to

12:49:22 18 flavors in RL. I was simply expanding it to the

12:49:26 19 process of cigarette manufacturing as

12:49:28 20 distinguished from the RL process, which is

12:49:32 21 merely one subset.

12:49:32 22 MR. MURPHY: With that

12:49:32 23 clarification -- I'm sorry, I lost track of the

12:49:34 24 question.

12:49:34 25 MR. KILLORY: I don't think there is

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12:49:36 2 one. I don't think there's one pending, to be
12:49:38 3 perfectly honest, David. But why don't you
12:49:42 4 object anyway.

12:49:42 5 MR. MURPHY: Why don't you try to put
12:49:44 6 a question to the witness.

12:49:44 7 MR. KILLORY: Once you finish, I'll
12:49:46 8 try.

12:50:02 9 MR. MURPHY: Denise, if you also
12:50:02 10 could be careful to speak up. Brian tells me
12:50:08 11 that some people are having trouble hearing you.
12:50:08 12 It would be helpful.

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12:50:10 13 Q. In an attempt to make the question
12:50:14 14 shorter rather than longer, document Exhibit
12:50:20 15 Number 1, at pages 21 through 43, has a
12:50:22 16 discussion of various additives.

12:50:26 17 And obviously the document speaks for
12:50:28 18 itself, but those additives include -- well, in
12:50:32 19 fact the list of additives based on the headings
12:50:34 20 of those pages, 21 through 43, are sugars,
12:50:40 21 volatile acids, nonane, nonvolatile acids,
12:50:46 22 nicotine citrate, ammonia, dipropylamine -- I'm
12:50:50 23 sure I mispronounced that -- calcium oxide and
12:50:52 24 glycerine.

12:50:58 25 If the documents show something else,

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12:51:00 2 I'll stand corrected. My question, in an attempt

12:51:04 3 to make the questioning briefer, is, have you
12:51:08 4 done any work in connection with studying the
12:51:08 5 level of those additives in cigarette
12:51:10 6 manufacture?
12:51:10 7 MR. MURPHY: I object to the form of
12:51:12 8 the question. Are you asking her whether she's
12:51:16 9 done any work with each of the listed additives
12:51:18 10 you just mentioned? Or do you want her to read
12:51:20 11 the document to verify as to what additives are
12:51:22 12 in fact discussed in it?

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12:51:26 13 Q. Have you ever done any work relating
12:51:28 14 to additives in the cigarette manufacturing
12:51:34 15 process?

12:51:36 16 A. No.

12:51:40 17 Q. Do you know what nicotine citrate
12:51:44 18 is?

12:51:44 19 A. No.

12:51:46 20 Q. Have you ever heard any reference to
12:51:48 21 nicotine citrate?

12:51:48 22 A. No.

12:51:50 23 Q. Do you have any understanding as to
12:51:50 24 whether additives affect the delivery of nicotine
12:51:56 25 in the smoke of the cigarette?

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12:52:00 2 A. I have no knowledge one way or the
12:52:00 3 other.

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12:52:04 4 Q. Could you turn to page 36, which is

12:52:12 5 Bates stamped PA 918364.

12:52:24 6 (Witness complies.)

12:52:30 7 Q. With a carryover to the next page,

12:52:34 8 37, the figure 16. On page 36 -- I'm sorry, the

12:52:40 9 production number is 202, four twos, 0444, for

12:52:44 10 page 36.

12:52:44 11 MR. MURPHY: Ted, I apologize, but

12:52:46 12 there is music playing that is audible in here.

12:52:52 13 It's extremely difficult for me to concentrate.

12:52:52 14 I don't know whether the witness is having

12:52:54 15 difficulty or not. But if there is something

12:52:56 16 that could be done about that, I think it would

12:52:58 17 be --

12:53:00 18 MR. KING: My guess is it's music in

12:53:02 19 the park for people having lunch out there.

12:53:04 20 MR. KILLORY: My proposal that should

12:53:06 21 cure it is that we just continue for a few

12:53:08 22 minutes more and that we break for lunch, and

12:53:10 23 hopefully it won't be a problem that we even have

12:53:14 24 to address.

12:53:14 25 MR. MURPHY: That would be fine.

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12:53:16 2 Q. On page 36, Ms. Donaher, it says that

12:53:20 3 "The percent nicotine transfer versus tar is

12:53:24 4 plotted in figure 16," which is the figure on the

12:53:28 5 next page. "The curve shown in figure 16 is the
12:53:34 6 curve taken from blend component study 10, shown
12:53:34 7 in figure 7."

12:53:44 8 Study number 10 is the study that you
12:53:46 9 prepared; correct?

12:53:48 10 A. That's correct.

12:53:54 11 Q. Do you understand what the figure 16
12:53:58 12 on the next page shows?

12:54:02 13 A. No, I don't.

12:54:04 14 Q. Do you have any understanding as to
12:54:08 15 the effect of ammonia on the level of nicotine in
12:54:10 16 the smoke of a cigarette?

12:54:12 17 A. No, I don't.

12:54:26 18 MR. KILLORY: I think in the hope
12:54:26 19 that the music will have ceased by the time we
12:54:30 20 return, we'll take a break for lunch. It's
12:54:32 21 now --

12:54:32 22 MR. MURPHY: Before we do that, Ted,
12:54:34 23 I would like to direct your attention to a
12:54:40 24 different part of the material that you cited to
12:54:42 25 the witness discussing additives in this

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1 Donaher - Highly Confidential - Trade Secret
12:54:44 2 document. It falls in the middle of the range of
12:54:46 3 pages that you directed her attention to.
12:54:50 4 On page 40, with specific discussion
12:54:58 5 of the subject of ammonia, I would like to ask
12:55:00 6 you to read into the record, or else I'll do it,

12:55:02 7 the paragraph, first of all the second full
12:55:08 8 paragraph on page 40, Bates number 2022222048.
12:55:16 9 MR. KILLORY: The exhibit is an
12:55:18 10 exhibit to the deposition. There is no
12:55:20 11 obligation to go through and read other pages.
12:55:22 12 If you in your questioning of the witness want to
12:55:26 13 read something on the record, you're free to do
12:55:26 14 it.

12:55:26 15 But I think we clearly established in
12:55:28 16 Burnley that's not an appropriate procedure, to
12:55:32 17 just pick pages from a 52-page, 53-page document
12:55:38 18 to read into the record. It's not appropriate,
12:55:42 19 David.

12:55:42 20 MR. MURPHY: I think it is plainly
12:55:44 21 appropriate to avail ourselves of the fair
12:55:46 22 comment rule, which is as applicable in Virginia
12:55:48 23 as in any other jurisdiction. I don't think
12:55:50 24 you're entitled to pick and choose portions of a
12:55:54 25 document to question the witness on without

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1 Donaher - Highly Confidential - Trade Secret
12:55:56 2 making the record clear that other portions of
12:55:58 3 the document may lend a different understanding
12:56:00 4 to that document.
12:56:02 5 And I will simply, acknowledging your
12:56:04 6 objection, read into the record the following.
12:56:06 7 MR. KILLORY: No. Wait a minute,
12:56:08 8 David. Let me speak. We established in Burnley

12:56:10 9 that if you want to read something into the
12:56:12 10 record, the fair comment rule does not extend to
12:56:14 11 reading other pages from which I didn't read;
12:56:18 12 that this is a multi-page document, and you do
12:56:20 13 not have the liberty to interrupt the deposition
12:56:24 14 with whatever portions you want to read into the
12:56:26 15 record. We're not going to proceed on that
12:56:26 16 basis.

12:56:26 17 MR. MURPHY: You asked this witness
12:56:28 18 to direct her attention to a series of pages
12:56:30 19 which included this page.

12:56:32 20 MR. KILLORY: That's not correct.

12:56:32 21 MR. MURPHY: You also made it clear
12:56:34 22 you were drawing the additives information,
12:56:36 23 including the information as to ammonia, from
12:56:38 24 sections of this report which include this
12:56:44 25 section, and there is a statement in this section

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1 Donaher - Highly Confidential - Trade Secret
12:56:44 2 which is quite different from the statement and
12:56:46 3 the information that you have been using to
12:56:48 4 question this witness.

12:56:52 5 It is on page 40 of this document.
12:56:54 6 It is quite clear. It says that "Based on these
12:56:58 7 experiments, it appears that the treatment of
12:57:00 8 bright tobacco with ammonia does not
12:57:02 9 significantly alter nicotine delivery to smoke."

12:57:08 10 MR. KILLORY: I did not question the

12:57:08 11 witness about that, but fine.

12:57:12 12 MR. MURPHY: Let's break for lunch.

12:57:12 13 We're off the record.

12:57:12 14 MR. KILLORY: Let's get back by --

12:57:16 15 it's now 12:56. Let's get back by one hour from

12:57:18 16 now, 2:00.

12:57:20 17 THE VIDEO OPERATOR: We're going off

12:57:20 18 the record. The time on the screen is 12:57:24.

19 (Luncheon recess: 12:57 p.m.)

20

21

22

23

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2 A F T E R N O O N S E S S I O N

3 2:07 p.m.

4

5 THE VIDEO OPERATOR: We're back on

6 the record. The time on the screen is 2:07:51.

7 D E N I S E R. D O N A H E R,

8 resumed, having been previously duly sworn, was

9 examined and testified further as follows:

10 CONTINUED EXAMINATION

02:07:56 11 BY MR. KILLORY:

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02:07:58 12 Q. Ms. Donaher, the blend study number

02:08:08 13 10 that we were discussing this morning was
02:08:08 14 prepared at whose request?
02:08:12 15 A. It was an assignment that was given
02:08:14 16 to me by my boss.
02:08:16 17 Q. And who was your boss at that time?
02:08:18 18 A. I believe it was Robert Mullins.
02:08:24 19 Q. In giving you that assignment what
02:08:28 20 did he say to you?
02:08:32 21 A. He said that -- or something along
02:08:34 22 these lines, that a series of these had been done
02:08:38 23 with some frequency, and he would like me to
02:08:42 24 coordinate the processing of tobacco in
02:08:48 25 subsequent testing and reporting of the results

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1 Donaher - Highly Confidential - Trade Secret
02:08:50 2 to make a blend component study. That would be
02:08:54 3 number 10.
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02:08:56 4 Q. And what other departments did you
02:08:58 5 interact with in performing that coordination
02:09:00 6 function?
02:09:02 7 A. R&D was the department, so it was
02:09:10 8 then R&D.
02:09:14 9 Q. Was there any further description
02:09:16 10 from your boss as to the purpose of the study?
02:09:18 11 A. Not that I can recall.
02:09:26 12 Q. To whom did you send study number
02:09:30 13 10?

02:09:30 14 MR. MURPHY: I object to the form.
02:09:32 15 You can answer.
02:09:34 16 A. Are you referring to the report?
02:09:36 17 Q. Yes.
02:09:42 18 A. It was written as a special report.
02:09:48 19 I don't know who got copies, if any did, but it
02:09:50 20 would be in R&D central files.
02:09:56 21 Q. But when you were given the
02:09:58 22 assignment by your boss, he did not direct you to
02:10:00 23 send it to any particular individual after you
02:10:02 24 had completed the study?
02:10:04 25 A. That's correct.

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02:10:10 2 Q. Did you input the data that you
02:10:10 3 collected for study number 10 into a computer
02:10:14 4 program of any sort?
02:10:18 5 A. It was in typed format, but that's --
02:10:22 6 no, not a program as such.
02:10:40 7 Q. You mentioned this morning a computer
02:10:44 8 program as to stem utilization that you worked
02:10:46 9 on. Was that -- when was that?
02:10:54 10 A. That was during an approximately
02:10:54 11 one-month period in December of 1988.
02:11:00 12 Q. And what was that computer program?
02:11:04 13 A. Other than what I --
02:11:06 14 Q. My recollection is you testified it
02:11:08 15 had to do with stem utilization.

02:11:12 16 A. Yes.

02:11:18 17 Q. Was the program designed to project

02:11:20 18 something with regard to stem utilization?

02:11:22 19 MR. MURPHY: I object to the form of

02:11:24 20 the question. I think it's a bit vague. But if

02:11:28 21 you understand it, you can answer.

02:11:30 22 A. What I recall was that there were a

02:11:38 23 number of issues regarding our usage of different

02:11:42 24 types of stem. And the program would allow a

02:11:54 25 user to look at pounds of inventory of stems, of

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1 Donaher - Highly Confidential - Trade Secret

02:12:00 2 bright or burley stems, of inventory, and look at

02:12:08 3 usage in our products and see how things balanced

02:12:12 4 out.

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02:12:18 5 Q. Would the program enable you to

02:12:22 6 calculate a projection based on hypothetical

02:12:26 7 variations in the stem utilization -- in the

02:12:30 8 stems utilized?

02:12:32 9 MR. MURPHY: I object to the form of

02:12:34 10 the question. I think I know what you're trying

02:12:36 11 to ask her, Ted, but that's a pretty jumbled

02:12:38 12 question.

02:12:56 13 Q. Did the stem utilization program

02:13:02 14 enable you to look at past usage of stems?

02:13:12 15 A. I'm very vague about what the details

02:13:14 16 of that program were. I spent a short time

02:13:20 17 working on it. I think it was written for
02:13:26 18 what-if scenarios, what if we wanted to try and
02:13:30 19 do this, what if we wanted to do that, how much
02:13:38 20 of each type of stem would be available or left,
02:13:40 21 or that kind of thing.

02:13:42 22 Q. Do you recall what any of those
02:13:42 23 what-if scenarios were?

02:13:50 24 A. No, I don't.

02:13:54 25 Q. Do you know if this computer program

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1 Donaher - Highly Confidential - Trade Secret

02:13:56 2 has been used since the time you worked on it?

02:13:58 3 A. No, it hasn't.

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02:14:00 4 Q. It has not?

02:14:00 5 A. It has not.

02:14:04 6 Q. You've been at Park 500 since

02:14:06 7 December of 1991; is that correct?

02:14:08 8 A. That's correct.

02:14:14 9 Q. You have enumerated a number of

02:14:18 10 projects that you worked on this morning. Have

02:14:20 11 all of those projects related to the production

02:14:24 12 of RL at Park 500?

02:14:26 13 MR. MURPHY: I object to the form of
02:14:28 14 the question. I think her testimony is clear.

02:14:32 15 But you can answer the question.

02:14:38 16 A. Obviously the steam project I

02:14:42 17 referred to, steam is used in the manufacture of

02:14:42 18 RL, but my effort was not directed in any way at

02:14:50 19 the manufacture of RL.
02:14:52 20 Q. My question is, the steam is used in
02:14:56 21 the RL -- by my definition in the last question,
02:15:02 22 I meant to include that as part of the RL
02:15:02 23 process. Is there anything you worked on while
02:15:08 24 at Park 500 that did not relate to the production
02:15:10 25 of RL?

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1 Donaher - Highly Confidential - Trade Secret
02:15:12 2 MR. MURPHY: Objection to form. You
02:15:16 3 can answer the question.
02:15:18 4 A. All my projects related in some way
02:15:20 5 to production of RL, but not necessarily RL that
02:15:24 6 was -- would be used in cigarettes sold to the
02:15:28 7 consumer.

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02:15:32 8 Q. Which of your projects involved RL
02:15:36 9 for cigarettes not to be sold to the consumer?
02:15:46 10 MR. MURPHY: Objection to form. You
02:15:48 11 can answer the question.
02:15:54 12 A. Some of my work with the Wiegand
02:16:06 13 evaporator was not related to RL put in the
02:16:10 14 product. The Bermuda stem processing wasn't
02:16:12 15 connected to production of RL in any way. I
02:16:18 16 think what I said earlier maybe made that a
02:16:22 17 little bit unclear.
02:16:30 18 Q. Anything else that you can recall
02:16:30 19 that did not relate to the production of RL for

02:16:34 20 cigarettes sold to the public?
02:16:34 21 MR. MURPHY: I object to the form of
02:16:36 22 the question. You can answer.
02:16:36 23 A. Another one I just recall sitting
02:16:40 24 here was the centrifuge sludge project.
02:16:50 25 Q. In what way did that not relate to

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1 Donaher - Highly Confidential - Trade Secret
02:16:52 2 cigarettes sold to the public?
02:16:54 3 MR. MURPHY: I object to the form of
02:16:56 4 the question.
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02:16:58 5 Q. Do you understand the question?
02:17:00 6 MR. MURPHY: If you understand the
02:17:00 7 question, you can answer it.
02:17:10 8 A. It was simply a short test. A short
02:17:10 9 test, and no product was shipped anywhere.
02:17:12 10 Q. So the results of that test were
02:17:18 11 never included, the product resulting from that
02:17:20 12 test was never included in a final product that
02:17:20 13 was shipped from Park 500?
02:17:22 14 A. That's correct.
02:17:24 15 Q. In the course of your work, have you
02:17:26 16 become familiar with the overall RL production
02:17:28 17 process on the three lines at Park 500?
02:17:32 18 MR. MURPHY: I object to the form of
02:17:34 19 the question. You can answer the question.
02:17:36 20 A. I'm generally aware or knowledgeable
02:17:40 21 about some of the areas of the process, yes.

02:17:44 22 Q. Do lines 1 and 2 at Park 500 use a
02:17:48 23 different process than line 3?
02:17:56 24 A. In principle, the process is the
02:17:58 25 same. There is some equipment that's slightly

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1 Donaher - Highly Confidential - Trade Secret
02:18:02 2 different and some of the setup is slightly
02:18:02 3 different.

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02:18:04 4 Q. What equipment is different?

02:18:04 5 MR. MURPHY: Again, between lines 1
02:18:08 6 and 2, versus line 3?

02:18:10 7 MR. KILLORY: Yes.

02:18:14 8 A. The ones that I'm aware of are the
02:18:20 9 pulping operation or the pulper; the pressing
02:18:28 10 operation, have different types of presses
02:18:36 11 between the two lines; the centrifuges are a
02:18:42 12 different type but perform the same function; the
02:18:52 13 evaporator, evaporators are slightly different
02:18:54 14 but perform the same function.

02:19:06 15 That's all I can think of.

02:19:08 16 Q. How are the pulpers on line 3
02:19:12 17 different from the pulpers on line 1 and 2?

02:19:14 18 A. In general concept I'll tell you what
02:19:18 19 I know. The pulper on line 3 would be considered
02:19:26 20 to be more continuous. And the pulpers on line 1
02:19:36 21 and 2 are batch.

02:19:42 22 Q. What do you mean by "batch"?

02:19:44 23 A. That a certain quantity of feedstock
02:19:48 24 is processed in a batch.
02:19:52 25 Q. And the feedstock I take it is the

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1 Donaher - Highly Confidential - Trade Secret
02:19:52 2 raw materials?
02:19:54 3 A. Yes, the raw materials that make up
02:19:54 4 the feed to the process.

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02:20:04 5 Q. Does line 3 have more than one
02:20:06 6 pulper?
02:20:06 7 A. Yes, it does.
02:20:18 8 Q. How many presses, as in piece of
02:20:18 9 equipment, are there on line 3?
02:20:22 10 MR. MURPHY: I object to the form of
02:20:30 11 the question. You can answer the question.
02:20:32 12 A. What I was going to ask is, are you
02:20:34 13 talking about how many presses there are right
02:20:36 14 now, or what time period are you talking about?
02:20:42 15 Q. How about as of March of 1984?
02:20:42 16 MR. MURPHY: 1984 or '94, Ted?
02:20:44 17 MR. KILLORY: '94, excuse me, thank
02:20:46 18 you.
02:20:48 19 MR. MURPHY: As of March 24, 1994.
02:20:58 20 A. I believe there are four operating.
02:20:58 21 I don't know exactly. There's some that are
02:21:00 22 physically there that aren't in operating
02:21:02 23 condition.
02:21:04 24 Q. Do the two separate pulpers on line 3

02:21:08 25 feed separate presses?

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02:21:10 2 MR. MURPHY: I object to the form.

02:21:12 3 You can answer.

02:21:18 4 A. I don't know of any situations where

02:21:24 5 RL was -- or feedstocks was fed from two pulpers

02:21:28 6 at the same time. And I don't know exactly what

02:21:34 7 the piping configuration is. But I've never

02:21:36 8 heard of that happening.

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02:21:42 9 Q. So you're not aware of any situation

02:21:42 10 where two RL products were run through line 3

02:21:46 11 presses at the same time?

02:21:48 12 MR. MURPHY: I object to the form.

02:21:50 13 You can answer if you understand the question.

02:21:52 14 A. I think what I said was that I'm not

02:21:56 15 aware of product coming from two pulpers to

02:22:04 16 either the same or different presses.

02:22:06 17 Q. I see. You're not aware of a

02:22:08 18 situation where both pulpers were -- on line 3,

02:22:12 19 were operating at the same time?

02:22:14 20 A. I'm not aware that they were

02:22:16 21 operating at the same time processing feedstocks

02:22:20 22 into the RL process.

02:22:30 23 Q. If Philip Morris wanted to make two

02:22:34 24 distinct types of RL on line 3 at the same time,

02:22:38 25 do you know if that could be done?

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02:22:40 2 MR. MURPHY: I object to the form of
02:22:42 3 the question. I think there is no foundation for
02:22:44 4 the question. But if you want to -- if you
02:22:48 5 understand the question, you can answer it.
02:22:54 6 A. I don't see how that's possible,
02:22:56 7 because upstream of the presses you have
8 single -- you have one tank that everything must
02:23:02 9 go through.

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02:23:04 10 Q. And what is that tank?
02:23:06 11 A. The stock chest. Or the fiber.
02:23:22 12 Q. You talked very briefly this morning
02:23:28 13 about the ART process, as you described it. When
02:23:28 14 did you first become aware of the ART process?
02:23:32 15 MR. MURPHY: I object to the form.
02:23:34 16 You can answer.
02:23:44 17 A. I don't know. I don't know when I
02:23:46 18 became aware of it one way or the other.
02:23:48 19 Q. Do you recall when you first heard of
02:23:54 20 the Bermuda Hundred plant?
02:24:06 21 A. Probably after I had returned to R&D
02:24:12 22 in the late '80s. But I can't be more specific
02:24:16 23 than that, because I don't have any knowledge of
02:24:20 24 the time frames of the ART process.
02:24:30 25 Q. Do you recall that we discussed the

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02:24:36 2 stems generated by the ART process this morning?

02:24:40 3 A. Yes, I remember.

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02:24:46 4 Q. Did those stems have higher nicotine

02:24:50 5 levels than when found in nature?

02:24:52 6 MR. MURPHY: I object to the form.

02:24:54 7 You can answer.

02:24:56 8 A. The nicotine levels in nature of

02:24:58 9 tobacco varies -- varies greatly.

02:25:06 10 Q. Do you know whether stems -- what the

02:25:12 11 nicotine level of stems is in natural state?

02:25:14 12 A. No, I don't.

02:25:16 13 Q. Do you have any understanding as to

02:25:18 14 whether the nicotine levels of the stems that

02:25:22 15 were generated by the ART process were higher

02:25:26 16 than before those stems were used in the ART

02:25:28 17 process?

02:25:28 18 MR. MURPHY: I object to the form.

02:25:30 19 You can answer.

02:25:36 20 A. In fact in the process you're

02:25:38 21 depositing nicotine from lamina onto stems. By

02:25:44 22 definition they had to be higher on average than

02:25:44 23 they were when they started.

02:25:46 24 Q. So your answer is yes to my preceding

02:25:48 25 question?

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02:25:50 2 A. They're higher than what they were
02:25:50 3 when they started, those specific stems, yes.

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02:25:58 4 Q. Do you know whether any of the ART
02:26:02 5 stems, the stems generated in the ART process,
02:26:04 6 were ever used in any Philip Morris cigarettes
02:26:08 7 that were sold to the public?

02:26:12 8 A. Not to my knowledge.

02:26:14 9 Q. Do you know for sure one way or the
02:26:16 10 other?

02:26:18 11 A. I don't know for sure one way or the
02:26:18 12 other.

02:26:18 13 Q. Have you ever seen any document that
02:26:24 14 reflects a decision not to use any of the ART
02:26:26 15 stems in any cigarette sold by Philip Morris to
02:26:28 16 the public?

02:26:28 17 A. I don't recall seeing any such
02:26:30 18 document.

02:26:42 19 Q. Do you know who would have made a
02:26:44 20 decision whether or not to include ART stems in
02:26:48 21 cigarettes sold to the public by Philip Morris?

02:26:50 22 MR. MURPHY: I object to the form.
02:26:52 23 You can answer the question.

02:27:00 24 A. What form are we -- what form are we
02:27:02 25 talking about ART stems?

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02:27:04 2 Q. The ART stems that were higher in

02:27:10 3 nicotine generated by the ART stem process.

02:27:14 4 MR. MURPHY: I still object to the

02:27:16 5 form. But you can answer the question.

02:27:18 6 A. No, I don't know who would be

02:27:20 7 responsible for making that decision.

02:27:30 8 Q. Apart from any consultations --

02:27:36 9 strike that.

02:28:02 10 Apart from consultations with

02:28:02 11 counsel, have you ever been asked by anyone at

02:28:06 12 Philip Morris to gather documents relating to ART

02:28:10 13 stems?

02:28:10 14 MR. MURPHY: I object to the form of

02:28:12 15 the question. You can answer the question.

02:28:16 16 A. Not that I know of.

02:28:16 17 Q. Did you ever receive a request from

02:28:18 18 David Merrill to collect any ART stem documents?

02:28:24 19 A. No, I haven't.

02:28:28 20 Q. Do you know who David Merrill is?

02:28:30 21 A. I have a general idea who he is.

02:28:30 22 Q. Who is he?

02:28:32 23 A. He's a manager of an environmental

02:28:40 24 group.

02:28:50 25 Q. Are you aware of any production of RL

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02:28:56 2 using the high nicotine level ART stems?

02:29:08 3 MR. MURPHY: I object to the form of
02:29:16 4 that question. I think the characterization may
02:29:18 5 not be accurate. But in any event, you can
02:29:20 6 answer the question, if you understand it.

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02:29:22 7 Q. Earlier when I used the phrase "ART
02:29:26 8 stems," you said, well, which ART stems? And I
02:29:28 9 was intending to be clear. I'm talking about the
02:29:32 10 ART stems as generated from the ART process.

02:29:38 11 A. I'm generally aware of a test that
02:29:42 12 was run where ART stems were tried in the RL
02:29:48 13 feedstocks.

02:29:50 14 Q. And how are you aware of that test?

02:29:56 15 A. When I was given the assignment to
02:30:00 16 dispose of the stems from Bermuda Hundred, I was
02:30:02 17 given some background information. That was one
02:30:06 18 of the pieces of background information that was
02:30:08 19 given to me.

02:30:10 20 Q. And who gave that background
02:30:10 21 information to you?

02:30:10 22 A. To the best of my knowledge, my boss
02:30:20 23 let me know what series of things had been tried
02:30:24 24 with the ART stems so I wouldn't be repeating
02:30:30 25 them and would know where my starting point was

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02:30:30 2 to determine what to do with them.

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02:30:32 3 Q. When you say your boss in this

02:30:34 4 context, does that refer to Dawn Saunders?

02:30:38 5 A. That's correct.

02:30:44 6 Q. Do you know what the results were of

02:30:50 7 that test of ART stems?

02:30:54 8 A. I heard that the product that was

02:30:56 9 produced during that test run did not taste --

02:31:02 10 was not subjectively acceptable.

02:31:08 11 Q. Do you know who made that

02:31:10 12 determination that the product was not

02:31:12 13 subjectively acceptable?

02:31:14 14 A. No, I don't.

02:31:18 15 Q. Who is your source of information for

02:31:22 16 what you just said, that it was -- you heard that

02:31:24 17 it was not subjectively acceptable?

02:31:28 18 MR. MURPHY: I object to the form.

02:31:30 19 You can answer the question.

02:31:30 20 A. I recall that it was my boss.

02:31:32 21 Q. Have you ever seen any document

02:31:32 22 reflecting that conclusion, that the product was

02:31:36 23 not subjectively acceptable?

02:31:38 24 A. I don't recall one way or the other.

02:31:46 25 Q. Have you ever heard of any other

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02:31:48 2 reason why ART stems were not used in the RL

02:31:54 3 process for products sold to the public?

02:31:56 4 A. No, I haven't.

02:32:02 5 Q. Do you recall when you were first
02:32:06 6 requested to assist in the ART stem disposal
02:32:10 7 project?
02:32:12 8 A. It was approximately January 1992.
02:32:30 9 Q. Was that conversation with
02:32:32 10 Ms. Saunders?
02:32:32 11 A. Yes.
02:32:34 12 Q. To the best of your recollection,
02:32:36 13 what do you recall Ms. Saunders requested you to
02:32:40 14 do in connection with the ART stem disposal?
02:32:46 15 A. She asked me to devise a method or
02:33:02 16 process that was simple, to remove the solubles
02:33:04 17 from the ART stems so that the solubles could be
02:33:16 18 treated by wastewater treatment and the fiber
02:33:20 19 would be sent to the landfill. Or that was one
02:33:24 20 of the proposals that she suggested to me to
02:33:28 21 investigate.
02:33:28 22 Q. Did she suggest any other proposals?
02:33:34 23 A. Not that I recall.
02:33:38 24 Q. You mentioned in an earlier response
02:33:46 25 that Ms. Saunders referenced the earlier tests of

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1 Donaher - Highly Confidential - Trade Secret
02:33:50 2 RL using ART stem. Do you recall giving that
02:33:56 3 answer?
02:33:56 4 A. Yes.
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02:34:00 5 Q. And I believe you said -- I don't
02:34:06 6 have the computer screen page in front of me, but

02:34:06 7 I believe you said that she mentioned that so
02:34:06 8 that you wouldn't be going over the same ground;
02:34:10 9 is that correct, or substantially what she said?
02:34:12 10 MR. MURPHY: I object to the form. I
02:34:16 11 think her testimony speaks for itself. But you
02:34:16 12 can answer the question if you understand it.
02:34:18 13 A. The part -- she reviewed all
02:34:22 14 background information of things that had been
02:34:24 15 tried, and that was one of them, and then what
02:34:26 16 the outcome or result was.
02:34:32 17 Q. Do you know what the total quantity
02:34:40 18 of stems generated by the ART process was?
02:34:44 19 A. No, I don't know what the total
02:34:46 20 quantity of stems was generated.
02:34:52 21 Q. Did Ms. Saunders give you any idea of
02:34:56 22 the quantity of stems in giving you the
02:34:58 23 assignment?
02:35:00 24 MR. MURPHY: Objection to form. Are
02:35:04 25 you still asking as to the quantity of stems

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1 Donaher - Highly Confidential - Trade Secret
02:35:06 2 generated by the ART process?
02:35:10 3 MR. KILLORY: Yes.
02:35:10 4 MR. MURPHY: Or are you asking a
02:35:10 5 different question?
02:35:12 6 MR. KILLORY: Yes.
02:35:18 7 A. We didn't talk in terms of how much
02:35:20 8 was generated by the ART process.

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02:35:24 9 Q. Wouldn't the quantity of stems have
02:35:24 10 some connection to what process one would
02:35:28 11 ultimately use to dispose of them?
02:35:30 12 MR. MURPHY: I object to the form of
02:35:32 13 the question. You can answer the question.
02:35:34 14 A. Can you rephrase it?
02:35:36 15 Q. Would not the quantity of stems
02:35:44 16 affect what process you ultimately would choose
02:35:46 17 to dispose of them?
02:35:46 18 MR. MURPHY: Same objection. You can
02:35:48 19 answer.
02:35:50 20 A. I mean, yes, it certainly would. She
02:35:50 21 told me a quantity that needed to be disposed
02:35:54 22 of.
02:35:54 23 Q. What quantity did she tell you?
02:36:00 24 A. Approximately 1 and a half million
02:36:04 25 pounds. That's very approximate. I don't recall

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1 Donaher - Highly Confidential - Trade Secret
02:36:06 2 the exact quantity.
Page: 142
02:36:08 3 Q. At the time of receiving this initial
02:36:14 4 assignment from Ms. Saunders, do you know whether
02:36:20 5 ART stems were still being generated by the
02:36:22 6 Bermuda Hundred facility?
02:36:26 7 A. To the best of my knowledge, the
02:36:30 8 plant was winding down, and no, that they weren't
02:36:34 9 being generated on a regular basis. But I'm not

02:36:36 10 positive.

02:36:42 11 MR. KILLORY: Mark the next exhibit,

02:36:44 12 please.

13 (Donaher Exhibit 3 for

14 identification, ART stems.)

02:37:14 15 Q. Ms. Donaher, the reporter has just

02:37:16 16 handed you a one-page document, handwritten

02:37:20 17 document entitled "ART stems." It was produced

02:37:26 18 by Philip Morris. The Bates stamp number is PB

02:37:30 19 118507. The production number is 2031410009.

02:37:36 20 Do you recognize the handwriting on

02:37:38 21 this document?

02:37:44 22 A. No, I don't.

02:37:48 23 Q. It's not your handwriting?

02:37:50 24 A. No, it's not.

02:37:54 25 Q. There's a reference to PM-80s at the

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02:38:00 2 top of the document, and then further down it

02:38:04 3 says, "Net weight per PM-80, 400 to 500 pounds."

02:38:10 4 Are you familiar with what a PM-80

02:38:12 5 is?

02:38:12 6 A. Yes.

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02:38:14 7 Q. What is it?

02:38:14 8 A. It's a large cardboard box which is

02:38:20 9 commonly used to store tobacco.

02:38:26 10 Q. Do you know whether it contains

02:38:30 11 approximately 400 to 500 pounds of tobacco?
02:38:34 12 A. That would vary greatly depending on
02:38:38 13 the type of tobacco.
02:38:42 14 Q. How about ART stems? Do you know if
02:38:48 15 it would contain 400 to 500 pounds of ART stems?
02:38:48 16 A. I don't know.
02:38:52 17 Q. So as best you can recall, this
02:38:54 18 handwritten note does not reflect the
02:38:56 19 conversation you had with Ms. Saunders or anyone
02:38:58 20 else?
02:39:00 21 MR. MURPHY: Objection to form. Lack
02:39:02 22 of foundation. I don't think, Ted, you've even
02:39:06 23 asked her whether she's ever seen this document
02:39:08 24 before or --
02:39:08 25 MR. KILLORY: I asked her whether she

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1 Donaher - Highly Confidential - Trade Secret
02:39:10 2 recognized the handwriting.
02:39:12 3 MR. MURPHY: That's a different
02:39:12 4 question.
02:39:14 5 A. I don't recognize the handwriting,
02:39:14 6 no.
Page: 144
02:39:14 7 Q. Have you ever seen it before?
02:39:14 8 A. No, I haven't.
02:39:20 9 Q. Now could you answer the question I
02:39:20 10 posed?
02:39:20 11 A. Which is?
02:39:22 12 Q. As best you can recall, this

02:39:26 13 handwritten note does not reflect the
02:39:28 14 conversation you had with Ms. Saunders or anyone
02:39:30 15 else?

02:39:30 16 MR. MURPHY: I object to the form of
02:39:32 17 the question. I still think there's a lack of
02:39:34 18 foundation. You can answer the question.

02:39:40 19 A. This document does not appear to be
02:39:44 20 contained in the conversation that we had, no.

02:39:58 21 Q. Were you ever aware that there were
02:40:02 22 more than 6,000 PM-80s of ART stem generated by
02:40:10 23 the ART process?

02:40:18 24 MR. MURPHY: Objection to form. You
02:40:18 25 can answer the question.

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02:40:18 2 A. I don't have any knowledge or
02:40:20 3 information about quantities of stems involved
02:40:24 4 other than what I was asked to dispose of.

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02:40:26 5 Q. And that's Ms. Saunders mentioned 1
02:40:32 6 and a half million; is that correct?

02:40:32 7 A. Yes.

02:40:48 8 Q. After your conversation with
02:40:52 9 Ms. Saunders, what was your next step in carrying
02:40:54 10 out the project relating to disposal of ART
02:40:58 11 stems?

02:41:02 12 A. The biggest issue that I focused on
02:41:06 13 was what type of press or what kind of means

02:41:08 14 could be used to separate the solubles from the
02:41:20 15 fiber so as to squeeze the juice out.
02:41:20 16 Q. Did you ever test a method of
02:41:24 17 disposal that did not involve separating the
02:41:28 18 juice from the fiber?

02:41:30 19 MR. MURPHY: I object to the form.
02:41:30 20 You can answer the question.

02:41:36 21 A. Not that I know of.

02:41:52 22 Q. And how did you make a determination
02:41:54 23 as to what type of press to use in the ART stem
02:41:58 24 disposal?

02:42:00 25 A. It was a matter of being able to

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02:42:06 2 identify and get a piece of equipment in that
02:42:12 3 would meet the needs in a reasonable time frame,
02:42:12 4 reasonable cost.

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02:42:18 5 Q. Was a new piece of press equipment
02:42:20 6 purchased for this purpose?

02:42:26 7 A. A piece of press equipment was
02:42:26 8 rented.

02:42:30 9 Q. In addition to the existing press
02:42:30 10 equipment at the Park 500 facility?

02:42:34 11 A. That's correct.

02:42:36 12 Q. Where was this press equipment
02:42:38 13 installed?

02:42:38 14 A. It was set up in line 3 blending.

02:42:44 15 Q. Could you describe the press

02:42:46 16 equipment?
02:42:48 17 A. It simply was a dewatering screen
02:42:52 18 similar to a screw conveyor or a screw
02:42:58 19 conveyor -- or screw press -- not conveyor --
02:43:02 20 screw press of sorts.
02:43:06 21 Q. It was similar to a screw --
02:43:08 22 A. It was a type of screw press. I was
02:43:14 23 getting my words mixed up here.
02:43:20 24 MR. KILLORY: Could you mark that as
02:43:22 25 the next exhibit, please.

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1 Donaher - Highly Confidential - Trade Secret
2 (Donaher Exhibit 4 for
3 identification, test request form.)

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02:43:50 4 Q. Ms. Donaher, the reporter has handed
02:43:56 5 you Donaher Exhibit Number 4, which is a test
02:43:58 6 request form, one page, bearing the Bates stamp
02:44:12 7 PB 118535, production number 2031410045. It's a
02:44:12 8 test request form, "Production, quality and
02:44:14 9 technical services."
02:44:20 10 It's not the clearest handwriting in
02:44:22 11 terms of legibility, but it appears to have your
02:44:24 12 name as the initiator of the test. Is that you
02:44:28 13 at the top of the form?
02:44:28 14 A. Yes.
02:44:34 15 Q. The date appears to be 1/20/92. Do
02:44:36 16 you recall whether that is correct?

02:44:36 17 A. That's what it says here.
02:44:40 18 Q. That is what it says? Okay. The
02:44:44 19 purpose of the test reads, "To determine if
02:44:50 20 the" -- is that speichim?
02:44:50 21 A. I call it speichim.
02:44:52 22 Q. S-P-I-C-H-E-I-M -- I mean, I-M, no
02:44:56 23 E. Although I like your pronunciation.
02:45:00 24 MR. MURPHY: I knew you would.
02:45:02 25 That's why this spelling is helpful.

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1 Donaher - Highly Confidential - Trade Secret
02:45:08 2 S-P-E-I-C-H-I-M.
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02:45:10 3 Q. "To determine if the speichim
02:45:14 4 dewatering press is capable of" -- can you help
02:45:18 5 me out with the next word?
02:45:20 6 MR. MURPHY: Ted, it might be helpful
02:45:22 7 if you ask Denise whether she's ever seen this
02:45:24 8 document before. I mean, I assume you're not
02:45:28 9 just asking her to help you read handwriting.
02:45:30 10 Q. Have you ever seen this document
02:45:30 11 before?
02:45:32 12 A. I believe I wrote it.
02:45:34 13 Q. That's what I thought. Do you
02:45:38 14 recognize the word that I'm having trouble
02:45:40 15 reading from the copy that was produced to us?
02:45:50 16 Is that "achieving"?
02:45:52 17 A. That would make sense.
02:45:56 18 Q. In the context here.

02:45:56 19 A. But I can't be sure that's what it
02:45:58 20 says.
02:45:58 21 Q. Then the figures that follow it, it
02:46:06 22 looks like "Greater than 20 percent T," and then
02:46:06 23 I can't make out --
02:46:08 24 A. That would be TS.
02:46:10 25 Q. TS. And what does TS stand for in

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1 Donaher - Highly Confidential - Trade Secret
02:46:12 2 that context?
02:46:14 3 A. Total solids.
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02:46:16 4 Q. "In processing of ART stems." So it
02:46:18 5 reads, "To determine if the speichim dewatering
02:46:20 6 press is capable of achieving greater than 20
02:46:26 7 percent TS," for total solids, "in processing of
02:46:26 8 ART stems"; is that correct?
02:46:28 9 A. That's correct.
02:46:30 10 Q. Thanks for your help. What was the
02:46:38 11 test that's reflected in this document?
02:46:44 12 MR. MURPHY: I object to the form.
02:46:46 13 You can answer the question.
02:46:54 14 A. I'm not sure -- what was the
02:46:54 15 purpose -- are you asking me to decipher the
02:46:56 16 purpose?
02:46:56 17 Q. Beyond the literal words that are
02:46:58 18 written under "Purpose," yes. Did you
02:47:00 19 participate in this test?

02:47:02 20 A. Yes, as far as I know.
02:47:04 21 Q. Do you know what the result of the
02:47:06 22 test was?
02:47:10 23 A. The result of the test was that the
02:47:18 24 fiber that exited from the press as cake was
02:47:30 25 greater than 20 percent total solids.

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02:47:32 2 Q. What was the high core Rotoshear
02:47:34 3 that's referred to in part C?
02:47:40 4 A. The Rotoshear is something that we
02:48:08 5 tried one time in setting up this process. It's
02:48:26 6 a rotating screen that is used to separate fiber
02:48:30 7 and liquid.
02:48:36 8 Q. When you say "liquid" in this
02:48:36 9 context, is liquid the same as the solubles?
02:48:38 10 A. That's correct.
02:48:40 11 Q. And were references at -- 25 GPM,
02:48:44 12 what does GPM stand for?
02:48:50 13 A. Gallons per minute.
02:48:50 14 Q. Was this process reflected in Exhibit
02:48:56 15 4 ultimately the one used in the ART stem
02:48:58 16 disposal process?
02:49:02 17 A. No.
02:49:04 18 Q. And why not?
02:49:06 19 A. The Rotoshear was not used.
02:49:12 20 Q. Why was it not used?
02:49:18 21 A. Didn't provide any assistance, was an

02:49:20 22 extra complicating step.
02:49:26 23 Q. Was its hoped-for purpose at the time
02:49:28 24 of this test to assist in the separating of the
02:49:30 25 solids from the solubles?

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02:49:32 2 MR. MURPHY: I object to the form.
02:49:34 3 You can answer.
02:49:38 4 A. It was an extra step that would
02:49:48 5 assist in raising the total solids. It was
02:49:50 6 necessary.
02:49:52 7 MR. KILLORY: Would you mark this.
8 (Donaher Exhibit 5 for
9 identification, test request form with pages
02:50:26 10 attached.)
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02:50:26 11 Q. Ms. Donaher, would you take a look at
02:50:28 12 what the reporter has marked as Exhibit 5 -- is
02:50:36 13 that correct? It's another test request form
02:50:40 14 with pages attached. The Bates stamp number is
02:50:48 15 PB 118464, with the last page PB 118471. The
02:50:54 16 production numbers corresponding to those Bates
02:51:10 17 numbers are 20314180084 and 2031410091.
02:51:18 18 Ms. Donaher, this test request form
02:51:20 19 again has your name as initiator of the test on
02:51:22 20 the front page. Was this prepared by you?
02:51:24 21 A. Yes.
02:51:24 22 Q. And you are also noted as a

02:51:28 23 designated coordinator of the test, one of the
02:51:34 24 designated coordinators as well. Is that
02:51:36 25 correct?

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02:51:36 2 A. Yes, it is.

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02:51:36 3 Q. Does this test request form reflect a

02:51:40 4 different test from the one reflected in the

02:51:40 5 preceding exhibit?

02:51:42 6 A. Yes, it would appear so.

02:51:44 7 Q. In what manner was it different?

02:51:50 8 A. The high core screen Rotoshear was

02:51:50 9 not part of this test. And this also has extra

02:52:06 10 steps with the liquor going through additional

02:52:12 11 tanks prior to going to the drain, to wastewater

02:52:16 12 treatment.

02:52:16 13 Q. Do you know whether the pages that

02:52:20 14 are attached to the cover sheet -- this is how

02:52:24 15 this document was produced to us, I believe. Do

02:52:26 16 you recall whether the pages that are attached to

02:52:30 17 the test request form as they appear in Exhibit 5

02:52:32 18 were originally attached to this test request

02:52:36 19 form?

02:52:42 20 MR. MURPHY: I object to the form.

02:52:42 21 You can answer.

02:52:56 22 A. Based on the verbiage that I see here

02:52:58 23 in the test request, I would say yes, they were

02:53:00 24 attached.

02:53:02 25 Q. If you could turn to the diagram on

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02:53:04 2 the third page of Exhibit 5, it's PB 118466, or

02:53:18 3 production number 2031410086. Is this a -- did

02:53:18 4 you prepare this diagram?

02:53:20 5 A. Yes.

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02:53:22 6 Q. Is this a diagram of the test process

02:53:26 7 reflected in the prose of this test request

02:53:28 8 form?

02:53:32 9 A. Are you referring to the second page,

02:53:38 10 or the same general?

02:53:42 11 Q. The same general test.

02:53:42 12 A. Yes, it is.

02:53:46 13 Q. Where is the stock surge tank?

02:53:50 14 There's tank number 1 and tank number 2 reflected

02:53:52 15 on that diagram. Where are those physically

02:53:56 16 located?

02:53:56 17 A. They're physically located in line 3

02:53:58 18 stock prep.

02:54:02 19 Q. How many stock surge tanks are there

02:54:06 20 on line 3?

02:54:08 21 A. There are two that I'm aware of.

02:54:10 22 Q. And at the time this test was run,

02:54:12 23 were there two as well?

02:54:12 24 A. Yes.

02:54:14 25 Q. And were both stock surge tanks used

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02:54:22 2 in the ART stem disposal test reflected in

02:54:22 3 Exhibit 5?

02:54:26 4 A. Yes, they were used in this test.

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02:54:34 5 Q. The test request form, Exhibit 5,

02:54:36 6 calls for the scheduling of the test to begin

02:54:42 7 Monday, I'm reading from the first page,

02:54:44 8 "Scheduled to begin Monday, February 17, at

02:54:48 9 0800," which I take to be 8:00 a.m.; is that

10 correct?

02:54:50 11 A. Yes.

02:54:50 12 Q. "For seven days providing all

02:54:54 13 maintenance" -- maybe it got cropped off.

02:55:00 14 "Maintenance install is completed."

02:55:00 15 "Maintenance installation," do you know if

02:55:04 16 that's what that was intended --

02:55:04 17 A. Yes, that was the intent.

02:55:06 18 Q. Do you know if this test in fact

02:55:08 19 occurred over that seven-day period?

02:55:14 20 A. I know the test occurred. I don't

02:55:16 21 know whether -- I can't recall whether it lasted

02:55:20 22 the full seven days, or --

02:55:22 23 Q. While -- I'm sorry.

02:55:22 24 A. -- or whether it occurred on those

02:55:24 25 exact dates.

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02:55:28 2 Q. While the test was going on, was any

02:55:32 3 RL being produced on line 3?

02:55:36 4 A. Yes, it was.

02:55:38 5 Q. Would that RL use the stock surge

02:55:42 6 tank 1 or stock surge tank 2?

02:55:44 7 A. No, it would not.

02:55:48 8 Q. Why not?

02:55:48 9 A. I have no knowledge of those stock

02:55:54 10 surge tanks ever being used for RL.

02:55:58 11 Q. What purpose, apart from the ART

02:56:02 12 disposal test, did the stock surge tanks on line

02:56:06 13 3 serve?

02:56:06 14 MR. MURPHY: I object to the form of

02:56:08 15 the question. I think the question assumes there

02:56:10 16 was another purpose served. You can ask the

02:56:12 17 witness a proper question.

02:56:14 18 Q. Do you understand the question?

02:56:14 19 A. I believe they were original

02:56:18 20 equipment when that line was built. I don't know

02:56:24 21 what the intended purpose was. And I have never

02:56:26 22 seen any used as long as I was at the plant.

02:56:30 23 Q. They were used for this test; is that

02:56:30 24 correct?

02:56:36 25 A. Yes, other than for this question.

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02:56:36 2 Q. What goes on in a stock surge tank?

02:56:40 3 MR. MURPHY: I object to the form.

02:56:44 4 Q. Literally, what happens to the

02:56:46 5 materials that are pumped to the stock surge

02:56:48 6 tank?

02:56:48 7 A. Are you talking about in the context

02:56:50 8 of this test?

02:56:50 9 Q. That's right.

02:56:52 10 A. In this test, the stock surge tanks

02:56:54 11 were strictly used as a storage, metering role,

02:57:00 12 because at the time there was a concern that our

02:57:04 13 wastewater treatment facility could not handle 25

02:57:06 14 gallons per minute of this liquor, the liquor

02:57:16 15 from the stems, without upsetting the balance in

02:57:18 16 the wastewater treatment plant.

02:57:22 17 So the thought was that we would run

02:57:24 18 it and then meter it at 8 gallons a minute,

02:57:28 19 because the process itself or the dewatering

02:57:32 20 screen could not be run at such a rate that you

02:57:34 21 could get 8 gallons a minute through it.

02:57:42 22 Q. Did 8 gallons per minute turn out to

02:57:44 23 be the rate at which the wastewater treatment

02:57:48 24 could handle the liquor coming from the ART stem

02:57:50 25 disposal?

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02:57:50 2 A. No --

02:57:52 3 MR. MURPHY: I object to the form of
02:57:54 4 the question. You can answer the question.

02:57:58 5 A. No, the wastewater treatment plant
02:58:02 6 was able to handle the full rate that was
02:58:04 7 produced out of the dewatering screen without the
02:58:08 8 use of stock surge tanks.

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02:58:10 9 Q. And what rate is that?

02:58:10 10 A. Approximately 25 gallons per minute.

02:58:12 11 Q. Were the stock surge tanks
02:58:16 12 discontinued following this test as part of the
02:58:18 13 ART stem disposal process?

02:58:20 14 MR. MURPHY: Objection to form. You
02:58:22 15 can answer.

02:58:24 16 A. They were discontinued. I don't know
02:58:28 17 exactly the time frame.

02:58:30 18 Q. But the stock surge tanks ultimately
02:58:32 19 were determined to be not necessary for the ART
02:58:34 20 stem disposal process?

02:58:36 21 A. That's correct.

02:58:44 22 Q. There's a reference on the second
02:58:50 23 page of Exhibit 5 to a TME, and I've seen it
02:58:56 24 elsewhere. What is a TME?

02:58:56 25 A. It stands for tramp material

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02:59:00 2 eliminator.

02:59:04 3 Q. What is a tramp material eliminator?

02:59:08 4 A. Any time you have a process that has

02:59:10 5 tobacco you're going to have contaminants,

02:59:14 6 foreign material, that come as a natural

02:59:18 7 substance, so it is a means of removing them.

02:59:20 8 Q. And the material removed by the TME

02:59:24 9 goes where?

02:59:24 10 A. Goes to the trash.

02:59:28 11 Q. When you say "trash," literally, what

02:59:30 12 do you mean?

02:59:32 13 A. Literally, I don't know.

02:59:34 14 Q. How about the solids produced by the

02:59:44 15 process reflected in Exhibit 5? Where do those

02:59:52 16 go?

02:59:52 17 MR. MURPHY: I object to the form of

02:59:52 18 the question. If you understand the question,

02:59:52 19 you can answer it.

02:59:54 20 A. Where do they go or where did they

02:59:56 21 go?

02:59:56 22 Q. Where did they go?

03:00:00 23 A. As the picture reflects, they went

03:00:00 24 into a dumpster.

03:00:02 25 Q. And what happened to those solids

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03:00:06 2 after being put in the dumpster?

03:00:08 3 A. They were taken to the landfill.

03:00:10 4 Q. Do you know which landfill?

03:00:12 5 A. I don't know -- Shoosmith Brothers.

03:00:18 6 I don't know the physical location.

03:00:20 7 Q. Is Shoosmith Brothers a company?

03:00:24 8 A. Yes, it is.

03:00:24 9 Q. Is it one particular landfill?

03:00:32 10 A. I believe they own a series. I don't

11 know.

03:00:32 12 Q. What's the basis for your

03:00:34 13 understanding that it was the Shoosmith Brothers

03:00:36 14 landfill?

03:00:36 15 A. The Shoosmith Brothers I understand

03:00:44 16 does most of the waste hauling from the plant.

03:00:46 17 Q. Do you know if any records were kept

03:00:50 18 of the quantity of solids that were disposed of

03:00:56 19 through the landfill?

03:01:02 20 A. I believe there were some log sheets

03:01:04 21 that the operators filled out.

03:01:12 22 Q. The last page, the last two pages of

03:01:16 23 Exhibit 5 are, respectively, page PB 118470 is a

03:01:24 24 blending attendant log sheet, page PB 118471 is

03:01:28 25 in part an ART stem GL log sheet, subheading,

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1 Donaher - Highly Confidential - Trade Secret

03:01:36 2 "Dumpster data, pump data."

03:01:38 3 Would either of those be the log

03:01:44 4 sheet that you're referring to for recording the

03:01:46 5 quantity of solids disposed of in the ART stem

03:01:48 6 disposal test?

03:01:48 7 MR. MURPHY: I object to the form.

03:01:50 8 You can answer.

03:01:54 9 A. Are we still talking about this

03:01:54 10 specific test?

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03:01:56 11 Q. That's right.

03:02:02 12 A. Are we talking about this test, or

03:02:04 13 are we talking about the ultimate --

03:02:06 14 Q. Let's start with this test.

03:02:14 15 A. The table entitled "Dumpster data"

03:02:18 16 would have been where this data went to be

03:02:20 17 recorded.

03:02:22 18 Q. Now, would that record the total

03:02:24 19 solids put in the dumpster or actually delivered

03:02:28 20 to the landfill?

03:02:30 21 MR. MURPHY: Again, this is first

03:02:34 22 with respect to the test itself in 1992?

03:02:34 23 MR. KILLORY: That's right. That's

03:02:34 24 right.

03:02:38 25 A. Total solids would refer to the

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1 Donaher - Highly Confidential - Trade Secret

03:02:40 2 percent total solids that were measured on that

03:02:44 3 dumpster. The tobacco -- not tobacco. The fiber

03:02:48 4 in that dumpster.

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03:02:52 5 Q. And the tobacco weight column would

03:02:54 6 record what?

03:02:58 7 A. Would be the weight of the wash
03:03:02 8 stems, whatever you want to call them, that went
03:03:04 9 in the dumpster.
03:03:08 10 Q. Expanding to the ART disposal process
03:03:12 11 ultimately chosen, were these the forms that were
03:03:22 12 used to record the solids disposed of?
03:03:24 13 MR. MURPHY: I object to the form.
03:03:24 14 You can answer the question.
03:03:26 15 A. I don't recall exactly what forms
03:03:28 16 were used and filled out during that time
03:03:40 17 period. It would seem that a report similar to
03:03:42 18 this was filled out.
03:03:44 19 Q. Do you know where the landfills in
03:03:50 20 which the solids ultimately disposed of were
03:03:52 21 disposed?
03:03:54 22 A. No.
03:03:54 23 Q. Was it the same company you referred
03:03:56 24 to before?
03:04:00 25 MR. MURPHY: Objection to form. I

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1 Donaher - Highly Confidential - Trade Secret
03:04:04 2 think the question is ambiguous.
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03:04:14 3 Q. Do you understand my question?
03:04:16 4 A. Shoosmith Brothers basically hauled
03:04:20 5 all the waste.
03:04:22 6 Q. Not just the test but also, as far as
03:04:24 7 you know, the disposal from the ultimate ART

03:04:28 8 disposal process?

03:04:28 9 A. As far as I know, yes.

03:04:34 10 Q. Do you know who would maintain the

03:04:38 11 records of solids that were landfilled as a

03:04:40 12 result of the ART disposal process?

03:04:46 13 A. No, I don't know who would have those

03:04:50 14 records.

03:04:54 15 Q. Again, on the last page of Exhibit 5,

03:05:02 16 you said the total solids would reflect the

03:05:06 17 percentage of solids taken out in this test from

03:05:14 18 the ART stems; is that correct?

03:05:16 19 MR. MURPHY: I object to the form of

03:05:18 20 the question. If you understand the question,

03:05:20 21 you can answer.

03:05:24 22 A. The question doesn't make sense.

03:05:26 23 Q. Explain to me -- I did not understand

03:05:28 24 your prior response as to the tobacco weight

03:05:30 25 column and the total solids column. Could you

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1 Donaher - Highly Confidential - Trade Secret

03:05:32 2 explain again what -- obviously -- I should be

03:05:36 3 much more basic.

03:05:38 4 The time category, am I correct that

03:05:40 5 that reflects the time at which the solids were

03:05:42 6 put in the dumpster?

03:05:44 7 A. That would be the time that a

03:05:48 8 dumpster was being emptied.

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03:05:50 9 Q. Being emptied into what?

03:05:54 10 A. A big dumpster. Little dumpster into
03:05:54 11 a big dumpster.
03:05:56 12 Q. And the tobacco weight category right
03:06:00 13 beside the time category, what would that
03:06:02 14 reflect?
03:06:02 15 A. The total weight minus the weight of
03:06:08 16 the dumpster of the fiber, wash stems, that were
03:06:12 17 being disposed of.
03:06:12 18 Q. That were in the dumpster?
03:06:16 19 A. That were in that dumpster.
03:06:16 20 Q. And how would that weight be taken?
03:06:18 21 MR. MURPHY: Objection to form. You
03:06:20 22 can answer.
03:06:24 23 A. I believe they used a scale.
03:06:24 24 Q. To the best of your understanding,
03:06:28 25 was an actual weight taken?

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1 Donaher - Highly Confidential - Trade Secret
03:06:30 2 A. Yes.
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03:06:30 3 Q. How about total solids? What does
03:06:36 4 that column reflect?
03:06:36 5 A. Total solids or percent total solids
03:06:46 6 is a measurement of the total solids, percent
03:06:46 7 total solids of that material.
03:06:50 8 Q. When you say "that material," in that
03:06:56 9 response --
03:06:56 10 A. In the dumpster. The material in the

03:06:58 11 dumpster contains the stems, stem fiber, and
03:07:00 12 water.
03:07:02 13 Q. So it would be a percentage figure
03:07:06 14 under total solids reflecting the percentage of
03:07:10 15 the nonwater components of the material in the
03:07:10 16 dumpster?
03:07:10 17 MR. MURPHY: I object to the form of
03:07:12 18 the question. You can answer it.
03:07:28 19 A. I don't know that you can say it's
03:07:30 20 just nonwater components. It's -- total solids
03:07:32 21 is basically if you took the material and put it
03:07:36 22 in an oven, that's the percentage by weight that
03:07:40 23 would be left.
03:07:42 24 Q. If you evaporated off the liquids; is
25 that correct?

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03:07:46 2 MR. MURPHY: I object to the form of
03:07:48 3 the question.

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03:07:48 4 Q. When you refer to putting it in the
03:07:52 5 oven, were you referring to evaporating off the
03:07:54 6 liquids?

03:07:54 7 A. Drying it.

03:07:56 8 Q. Is there any liquor still in the --
03:08:00 9 was there any liquor in the materials disposed of
03:08:02 10 in the dumpster?

03:08:06 11 MR. MURPHY: I object to the form of
03:08:08 12 the question. You can answer the question if you

03:08:10 13 understand what he's asking you. I think he's
03:08:12 14 shifting back and forth. Can you ask the
03:08:14 15 question again?
03:08:16 16 Q. Was there any liquor in the dumpster
03:08:16 17 materials?
03:08:20 18 MR. MURPHY: Again, I object to the
03:08:22 19 form of the question.
03:08:24 20 Q. Do you understand the question?
03:08:24 21 MR. MURPHY: I think it lacks
03:08:28 22 foundation. If you understand the question, you
03:08:28 23 can answer it.
03:08:32 24 A. I mean, what I'm thinking is that the
03:08:36 25 liquor -- liquor is what went in the sewer, and

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1 Donaher - Highly Confidential - Trade Secret
03:08:38 2 the stems, remaining materials, went in the
03:08:40 3 dumpster.
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03:08:42 4 Q. My question is, do you know whether
03:08:42 5 all of the liquor went in the sewer?
03:08:44 6 MR. MURPHY: I don't understand what
03:08:46 7 you mean by the word "liquor" here. I mean,
03:08:50 8 that's what I think is causing problems, Ted.
03:08:52 9 Q. The solubles that are separated
03:08:56 10 out -- let's go back to the chart. In the
03:09:18 11 pulper, number 2, for this test of ART stem
03:09:26 12 disposal, what materials were put in the pulper?
03:09:32 13 A. The ART stems and water.

03:09:38 14 Q. Were the ART stems separated from the
03:09:44 15 soluble components in those ART stems during this
03:09:48 16 process?

03:09:48 17 MR. MURPHY: I object to the form of
03:09:50 18 the question. I think it's incomprehensible.
03:09:54 19 But if you understand it, you can answer it.

03:09:56 20 A. Are you talking about in the pulper?

03:09:58 21 Q. No. In the process.

03:10:02 22 A. Can you repeat that, please?

03:10:04 23 Q. Sure. In the pulper at the start of
03:10:12 24 the process you have water and you have the ART
03:10:14 25 stems generated by the ART process; correct? The

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1 Donaher - Highly Confidential - Trade Secret
03:10:20 2 process diagramed on this page PB 118466 involves
03:10:32 3 separating the stems from the soluble materials;
03:10:36 4 is that correct?

03:10:36 5 MR. MURPHY: I object to the form of
03:10:38 6 the question. I think it misstates her prior
03:10:40 7 testimony. But you can answer the question.

03:10:44 8 A. I would view it more as a washing
03:10:46 9 process.

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03:10:50 10 Q. And so there is no liquor involved in
03:10:54 11 this process?

03:10:58 12 A. "Liquor" is a generic term.

03:11:02 13 Q. It's a generic term for what?

03:11:04 14 A. For liquid -- a liquid that contains
03:11:08 15 tobacco solubles.

03:11:08 16 Q. And the liquid that was separated out
03:11:12 17 from the ART stems contains tobacco solubles;
03:11:16 18 correct?
03:11:16 19 A. Yes.
03:11:18 20 Q. So that is liquor; correct?
03:11:20 21 A. Yes.
03:11:20 22 Q. That's what I thought.
03:11:26 23 MR. MURPHY: Was that just an
03:11:28 24 editorial comment or was it a question?
03:11:38 25 Q. Would any of the liquor generated in

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1 Donaher - Highly Confidential - Trade Secret
03:11:44 2 the ART stem process -- did any of the liquor
03:11:48 3 generated in the ART stem process end up with the
03:11:50 4 materials that went in the dumpster?
03:11:54 5 MR. MURPHY: Again, I object to the
03:11:54 6 form of the question. I think it's unclear. But
03:11:58 7 you can answer the question if you understand
03:11:58 8 it.
03:12:00 9 A. Well, you're talking about generating
03:12:04 10 liquor. The only thing that can generate liquor
03:12:06 11 is the squeezing.

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03:12:08 12 Q. And when the squeezing occurs, is all
03:12:08 13 the liquor pulled out of the fiber materials?
03:12:16 14 A. All the free liquid that could be
03:12:20 15 squeezed out of it, yes, was pulled out.
03:12:24 16 Q. And you earlier testified there is

03:12:26 17 liquid in the dumpster; correct?

03:12:30 18 MR. MURPHY: I object to the form of

03:12:30 19 the question. I don't think that was precisely

03:12:32 20 her testimony.

03:12:34 21 Q. Is that inaccurate, that there is

03:12:34 22 liquid in the dumpster as well?

03:12:40 23 A. There's not liquid that you could

03:12:40 24 physically see in the dumpster.

03:12:42 25 Q. But you earlier said the percentage

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1 Donaher - Highly Confidential - Trade Secret

03:12:46 2 of solids as contrasted with the liquids was

03:12:48 3 reflected in the total solids category; is that

4 correct?

03:12:50 5 MR. MURPHY: I object to the form of

03:12:52 6 the question. I think the question is being

03:12:56 7 asked in an argumentative way. I think the

03:12:58 8 testimony was quite clear as to --

03:13:00 9 MR. KILLORY: You've made your

03:13:02 10 objection. You don't need to repeat her

03:13:04 11 testimony.

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03:13:04 12 Q. Do you understand the question?

03:13:06 13 MR. MURPHY: I'm not going to have my

03:13:06 14 objections interrupted by you, Mr. Killory.

03:13:10 15 MR. KILLORY: That's a speaking,

03:13:10 16 talking objection, and that's not permitted.

03:13:12 17 MR. MURPHY: You will not interrupt

03:13:16 18 me while I am making objections or we will

03:13:16 19 suspend this deposition.

03:13:16 20 MR. KILLORY: That's a favorite

03:13:18 21 tactic.

03:13:18 22 MR. MURPHY: This is the 11th time

03:13:20 23 you have tried to speak over my objections. I

03:13:22 24 will put any objections that I have on the record

03:13:24 25 of this deposition. If you do not intend to let

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03:13:26 2 me do so, then we will come back another day,

03:13:28 3 because this is not going to be conducted in this

03:13:30 4 fashion.

03:13:32 5 I was simply saying that I think that

03:13:34 6 your question is slightly inaccurate in its

03:13:36 7 description of her prior testimony as to what the

03:13:40 8 total solids entry represents. Maybe we should

03:13:46 9 go back over that again so that it's clear. Why

03:13:48 10 don't you pose a proper question.

03:13:50 11 MR. KILLORY: Your silly threats are

03:13:52 12 inappropriate in the context of this overall

03:13:54 13 deposition. It's been conducted entirely

03:13:56 14 properly by me.

03:13:56 15 MR. MURPHY: I will not have my

03:14:00 16 objections spoken over, though. That is not

03:14:00 17 appropriate. I am not saying you're conducting

03:14:02 18 the deposition inappropriately in other

03:14:04 19 respects. But I want my objections to be heard.

03:14:08 20 I insist upon that. That is my right. It's the

03:14:10 21 witness's right. Just put a proper question and
03:14:12 22 we'll have an orderly deposition here.

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03:14:14 23 Q. Are the total -- you earlier
03:14:16 24 described the total solids column of the ART stem
03:14:18 25 GL log sheet as reflecting the percentage of

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1 Donaher - Highly Confidential - Trade Secret
03:14:26 2 solids in the materials put in the dumpster. Is
03:14:28 3 that correct?
03:14:30 4 A. Percentage of solids by weight.

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03:14:32 5 Q. And what is the other material?
03:14:38 6 A. Anything that could be removed if you
03:14:40 7 dried it.
03:14:50 8 Q. Did the stems run through presses in
03:14:54 9 the course of the process described in Exhibit
03:14:56 10 5?

03:15:00 11 A. That's what this speichim dewatering
03:15:04 12 screen is.

03:15:04 13 Q. So that is a press?

03:15:06 14 A. It is a press, yes.

03:15:08 15 Q. Do you know if there's any nicotine
03:15:12 16 in the solids that go in the dumpster?

03:15:14 17 A. No, I don't.

03:15:14 18 Q. Do you know if there are any permits
03:15:16 19 required for transporting materials containing
03:15:20 20 nicotine?

03:15:20 21 A. I'm not aware of what the

03:15:22 22 requirements are.

03:15:24 23 Q. Do you know if there are any

03:15:28 24 requirements in permits requiring -- any permits

03:15:30 25 required for the disposal of nicotine containing

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1 Donaher - Highly Confidential - Trade Secret

03:15:34 2 substances in landfill?

03:15:34 3 A. I'm not aware of it specifically, no.

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03:15:38 4 Q. Did you ever have any discussions on

03:15:40 5 the subject of disposing of the materials with

03:15:46 6 anyone in the course of this test?

03:15:50 7 MR. MURPHY: I object to the form of

03:15:52 8 the question.

03:15:52 9 Q. Did you have any discussions at all

03:15:54 10 regarding the disposal phase?

03:15:56 11 MR. MURPHY: Mr. Killory, I think I

03:15:58 12 made it clear a minute ago that I did not intend

03:16:00 13 to have you interrupt my objections.

03:16:06 14 MR. KILLORY: I didn't know you were

03:16:06 15 still making one. I apologize.

03:16:06 16 MR. MURPHY: I said I object to the

03:16:08 17 form of the question. The witness may answer the

03:16:10 18 question, but I think the question is somewhat

03:16:10 19 vague and could be made more clear. If you are

03:16:14 20 able to make it more clear, I would suggest that

03:16:16 21 you do so.

03:16:20 22 Q. Did you ever have any conversations

03:16:24 23 with anyone at Park 500 regarding the disposal of
03:16:30 24 the solids in the landfills in connection with
03:16:30 25 the ART stem disposal process?

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03:16:36 2 MR. MURPHY: I object to the

03:16:38 3 question. It's extremely broad.

03:16:40 4 MR. KILLORY: That's intended --

03:16:42 5 MR. MURPHY: It would encompass any

03:16:46 6 conversation with respect to this process, any

03:16:46 7 conversation of any type, including the

03:16:46 8 conversations that she has already testified to

03:16:54 9 with respect to Ms. Saunders about how to do this

03:16:54 10 process and what the process would be.

03:16:56 11 I think the question is almost

03:16:58 12 unanswerable as posed. If you could ask a

03:17:00 13 narrower question, please do so.

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03:17:04 14 Q. Do you understand the question?

03:17:12 15 A. Going all the way back to when I was

03:17:14 16 given the assignment, there was discussion that

03:17:18 17 that was an option that could be looked at. And

03:17:24 18 I was told that the requirement was that -- that

03:17:26 19 the total solids needed to be greater than 20

03:17:30 20 percent for the material to be landfilled. That

03:17:30 21 was the --

03:17:32 22 Q. Did you ever have any other

03:17:34 23 discussions following your discussion with

03:17:38 24 Ms. Saunders about landfill requirements?

03:17:48 25 A. Not that I recall, because my

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03:17:48 2 assignment was clear from the beginning.

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03:17:54 3 Q. Did you ever have any discussions

03:17:54 4 with anyone about the nicotine content of the

03:18:00 5 materials being sent to landfill as a result of

03:18:00 6 the ART stem disposal process?

03:18:02 7 A. Yes, I did.

03:18:04 8 Q. And what were those conversations?

03:18:04 9 A. I asked -- I asked my boss whether or

03:18:12 10 not that was a concern or issue, and she

03:18:20 11 suggested or agreed, I can't recall which, that

03:18:22 12 we should pull a sample and check it.

03:18:24 13 Q. I'm sorry, I didn't hear --

03:18:26 14 A. That we should pull a sample and

03:18:28 15 check the nicotine of the stems or fiber.

03:18:34 16 Q. When did this conversation occur?

03:18:36 17 A. I don't remember the date.

03:18:38 18 Q. Was it during the testing phase of

03:18:40 19 the process?

03:18:40 20 A. Yes, it was.

03:18:44 21 Q. And what --

03:18:46 22 MR. MURPHY: I'm sorry, Ted. By

03:18:48 23 "testing phase," you mean before the operational

03:18:52 24 phase of the actual disposal?

03:18:52 25 MR. KILLORY: We've been dealing so

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03:18:54 2 far with tests.

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03:18:54 3 Q. Is that correct?

03:18:54 4 A. Yes.

03:18:54 5 Q. Was the conversation -- when you said

03:18:58 6 your boss, were you referring again to

03:19:00 7 Ms. Saunders?

03:19:00 8 A. Yes, I was.

03:19:00 9 Q. Did the conversation with

03:19:08 10 Ms. Saunders occur during the phase in which you

03:19:08 11 were conducting tests of the ART stem disposal

03:19:10 12 process?

03:19:10 13 A. Yes, I believe so.

03:19:12 14 Q. And did you take a sample?

03:19:14 15 A. Yes, I did.

03:19:14 16 Q. And what was the result of that

03:19:16 17 sample testing?

03:19:20 18 A. I don't know.

03:19:22 19 Q. Do you know if there's a record that

03:19:24 20 was maintained of that sample testing?

03:19:26 21 A. No, I don't.

03:19:28 22 Q. Did you reach any conclusion based on

03:19:30 23 that sample?

03:19:32 24 MR. MURPHY: I object to the form of

03:19:34 25 the question. Lack of foundation.

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03:19:36 2 A. I don't understand what kind of

03:19:40 3 conclusion you're asking me about.

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03:19:42 4 Q. Did you reach a conclusion as to the

03:19:44 5 level of nicotine content in the solids as a

03:19:46 6 result of that test?

03:19:46 7 MR. MURPHY: Same objection.

03:19:54 8 A. I was told that it was okay to

03:19:54 9 proceed with testing and processing.

03:19:58 10 Q. I'm sorry. That it was okay to

03:20:00 11 proceed with processing?

03:20:00 12 A. Yes, based on the equipment and setup

03:20:04 13 we had.

03:20:06 14 Q. But no one told you what the nicotine

03:20:10 15 level of the tested solids was?

03:20:12 16 A. No, they didn't.

03:20:22 17 MR. MURPHY: Ted, it's now about

03:20:24 18 3:20. Would this be a convenient time to take a

03:20:26 19 break?

03:20:26 20 MR. KILLORY: Why don't we go about

03:20:30 21 five or ten minutes, if that's okay, then we

03:20:30 22 might have a more natural break point.

03:20:32 23 MR. MURPHY: That's fine. It's the

03:20:50 24 3:00 yawns that set in.

03:20:50 25 MR. KILLORY: Actually, David, can we

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03:20:54 2 keep it to ten minutes?

03:20:54 3 MR. MURPHY: Absolutely.

03:20:56 4 MR. KILLORY: So we'll be back at

03:20:56 5 3:30. That's fine.

03:20:58 6 THE VIDEO OPERATOR: We're going off

03:20:58 7 the record. Time on the screen is 3:21. This is

03:21:08 8 the end of videotape number 2.

03:21:08 9 (A recess was taken.)

10 (Donaher Exhibit 6 for

11 identification, request form dated 3/16/92.)

03:38:26 12 THE VIDEO OPERATOR: This is

03:38:26 13 videotape number 3, the continuation of the

03:39:00 14 deposition of Ms. Donaher. The time on the

03:39:06 15 screen is 3:39:05.

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03:39:06 16 Q. Ms. Donaher, I'm handing to you a

03:39:10 17 document that's been marked by the reporter as

03:39:12 18 Donaher Exhibit Number 6. It is another test

03:39:22 19 request form dated 3/16/92.

03:39:22 20 A. Before we have questions, I was

03:39:24 21 thinking about something about my previous

03:39:26 22 testimony over the break I wanted to clear up.

03:39:28 23 Q. Okay.

03:39:28 24 A. You asked a question along the lines

03:39:32 25 of, were there occasions I searched for documents

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03:39:38 2 or discussed documents on the ART stem with
03:39:42 3 anyone other than counsel, and I had an instance
03:39:44 4 where my boss asked me for some documents.

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03:39:48 5 Q. And what instance was that?

03:39:50 6 A. Approximately March, February time
03:40:02 7 frame of 1994, I was asked by my boss, which was
03:40:08 8 Mickey Annamanthadoo, if I had some documents on
03:40:10 9 the ART process.

03:40:12 10 Q. Did you have discussions with counsel
03:40:14 11 during the break?

03:40:16 12 MR. MURPHY: I object to that
03:40:16 13 question. I'll let her answer whether she
03:40:20 14 conferred with counsel. I will not let her
03:40:22 15 answer any question that would tend to reveal any
03:40:28 16 conversations that she had with counsel or any of
03:40:28 17 those communications. Subject to that
03:40:32 18 understanding --

03:40:32 19 MR. KILLORY: I believe the question
03:40:32 20 was, did you have discussions with counsel.

03:40:34 21 MR. MURPHY: I just want to make it
03:40:36 22 clear to the witness.

03:40:38 23 A. Yes, I did.

03:40:38 24 Q. Did you have any documents at the
03:40:42 25 time of that request in February or March of

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1 Donaher - Highly Confidential - Trade Secret

03:40:46 2 1994?

03:40:46 3 A. Yes, I did.

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03:40:48 4 Q. To whom did you give those ART stem

03:40:50 5 documents?

03:40:50 6 A. I gave them to Mickey Annamanthadoo.

03:40:54 7 Q. Do you recall what those documents

03:40:54 8 were?

03:40:56 9 A. They were documents similar to some

03:41:02 10 of the ones we've seen here.

03:41:02 11 Q. Anything else you would like to add

03:41:04 12 to clarify your earlier testimony?

03:41:06 13 A. No.

03:41:08 14 Q. Looking at Donaher Exhibit 6, it's

03:41:14 15 another test request form. This one lists as

03:41:16 16 initiator of the test Denise Donaher and Doug

03:41:22 17 Budd. Was Doug Budd someone with whom you

03:41:24 18 worked?

03:41:24 19 A. I worked with him on these tests,

03:41:26 20 yes.

03:41:28 21 Q. Did you prepare this document?

03:41:30 22 A. Yes, I did.

03:41:32 23 Q. Does this reflect continuing testing

03:41:36 24 of an ART stem disposal process as of March 16,

03:41:40 25 1992?

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03:41:42 2 MR. MURPHY: I object to the form of

03:41:44 3 the question with respect to continuous testing.

03:41:50 4 I'm not sure what you are referring to.

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03:41:50 5 Q. If you read "continuous," it should

03:41:54 6 read "continuing."

03:41:54 7 MR. MURPHY: Perhaps I misheard, or

03:41:56 8 the court reporter did.

03:41:58 9 Q. Continuing testing. We've been

03:42:00 10 discussing testing through February. My question

03:42:06 11 is, as of March 16, 1992, was testing continuing?

03:42:10 12 A. Based on my recollection and this

03:42:14 13 document, that up until this point we had done

03:42:16 14 sporadic tests. This was to evaluate continuous

03:42:20 15 operation.

03:42:24 16 Q. The paragraph E of the document calls

03:42:26 17 for testing for -- from Tuesday, 3/17/92,

03:42:32 18 continuing 24 hours per day until 0700 hours on

03:42:36 19 Tuesday, 3/24/92. Is that correct?

03:42:38 20 A. That's what it says here, yes.

03:42:40 21 Q. Do you know if that testing

03:42:42 22 occurred?

03:42:44 23 A. I believe that it did, in these

03:42:48 24 approximate time frames, yes.

03:42:48 25 Q. Do you know whether the process used

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1 Donaher - Highly Confidential - Trade Secret

03:42:54 2 in this March testing was the same process

03:43:00 3 described in Exhibit 5 with regard to the

03:43:00 4 February testing?

03:43:04 5 MR. MURPHY: I object to the form of

03:43:06 6 the question. If you understand it, you can

03:43:08 7 answer it.

03:43:10 8 A. Are we talking about the process --

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03:43:14 9 Q. Process outlined in Exhibit 5 in the

03:43:20 10 diagram that you prepared, that's right. Was the

03:43:20 11 process used for the test reflected in Exhibit 6

03:43:24 12 the same process as you had diagramed as

03:43:24 13 reflected in Exhibit 5?

03:43:32 14 A. I don't know at what points the

03:43:38 15 decision was made exactly to remove the stock

03:43:42 16 surge tank metering system to wastewater

03:43:42 17 treatment. The process would have been

03:43:46 18 approximately the same with the exception of that

03:43:50 19 step, which I'm not sure about the timetable of

03:43:52 20 when that decision was made.

03:43:54 21 Q. So that decision may have happened

03:43:56 22 after this test or it may have been before, you

03:43:56 23 don't recall?

03:43:58 24 A. That's correct.

03:44:00 25 Q. Other than the elimination of the

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1 Donaher - Highly Confidential - Trade Secret

03:44:02 2 stock surge tank, are there any other changes in

03:44:10 3 the ART stem disposal process that's reflected in

03:44:10 4 the diagram you prepared in Exhibit 5?

03:44:12 5 MR. MURPHY: I object to the form of

03:44:14 6 the question. If the witness is able to answer,

03:44:16 7 she can answer.
03:44:30 8 A. The only other change that could have
03:44:36 9 happened at this test time was the replacement,
03:44:40 10 rather than using the air pump, the Wildon air
03:44:44 11 pump to feed the dewatering screen, we used a
03:44:50 12 valve off the centrifugal pump, because the air
03:44:54 13 pump was not doing a good job of feeding the
03:44:54 14 dewatering screen. I don't know when that
03:44:58 15 occurred.

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03:45:02 16 Q. Do you recall when the ART stem
03:45:04 17 disposal process went operational?

03:45:06 18 A. In terms of a continuous effort to
03:45:10 19 dispose of the stems? I don't know the exact
03:45:14 20 date, no.

03:45:14 21 Q. Do you know roughly when in relation
03:45:16 22 to the March testing?

03:45:24 23 MR. MURPHY: Objection to form. You
24 can answer.

03:45:28 25 A. It occurred approximately in the

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1 Donaher - Highly Confidential - Trade Secret
03:45:32 2 March time frame of 1992, may have been April.

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03:45:34 3 Q. When it went operational as a
03:45:38 4 continuous process, did it operate on a
03:45:40 5 24-hours-a-day basis?

03:45:46 6 A. I believe so.

03:45:46 7 Q. And do you know for how long that

03:45:48 8 process operated?

03:45:50 9 A. Ten to 12 months.

03:46:04 10 Q. So to the best of your recollection,

03:46:04 11 the ART stem disposal process in its operational

03:46:12 12 mode concluded when?

03:46:16 13 A. Sometime between November of 1992 and

03:46:28 14 February or March of 1993. I really don't know

03:46:30 15 exactly.

03:46:30 16 Q. Are there any documents that record

03:46:34 17 the test period -- I'm sorry, the operational

03:46:38 18 period of the ART stem disposal process?

03:46:42 19 A. The only documents that may have that

03:46:46 20 information would be the log sheets kept by the

03:46:50 21 operators.

03:46:56 22 Q. Do you know if those log sheets are

03:46:56 23 retained?

03:46:56 24 A. I don't know.

03:46:58 25 Q. Did you have a continuing role in the

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1 Donaher - Highly Confidential - Trade Secret

03:47:00 2 ART stem disposal process during its operational

03:47:04 3 phase?

03:47:04 4 A. No, I didn't.

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03:47:12 5 Q. What is your understanding as to

03:47:14 6 whether the 1 and a half million pounds that

03:47:20 7 Ms. Saunders assigned you the task of disposing

03:47:24 8 of -- let me strike that.

03:47:42 9 Is it your understanding that the 1

03:47:44 10 and a half million pounds that Ms. Saunders
03:47:46 11 referenced in her initial conversations with you
03:47:50 12 were disposed of, the 1 and a half million pounds
03:47:54 13 of ART stems?

03:47:56 14 A. Whatever quantity it was -- which I
03:47:58 15 think I stated earlier I wasn't sure, 1 and a
03:48:02 16 half is an approximate -- whatever that quantity
03:48:02 17 was, yes, I understood that those stems had all
03:48:06 18 been disposed of.

03:48:08 19 Q. During the operational mode of the
03:48:10 20 ART stem disposal process, do you know whether RL
03:48:14 21 was being produced on line 3?

03:48:18 22 A. I believe that it was.

03:48:26 23 Q. Do you know whether there was any
03:48:28 24 commingling of materials between the RL process
03:48:34 25 operating on line 3 and the ART stem disposal

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1 Donaher - Highly Confidential - Trade Secret
03:48:36 2 process?

03:48:36 3 A. Not to my knowledge.

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03:48:42 4 Q. And what's the basis of your
03:48:46 5 knowledge with regard to commingling of
03:48:46 6 materials?

03:48:48 7 MR. MURPHY: Objection to form. You
03:48:50 8 can answer.

03:48:56 9 A. You have a series of tanks and pipes
03:49:00 10 that have a start point and end point. And the

03:49:04 11 end point is a dumpster and the sewer.

03:49:12 12 Q. And none of the points before those

03:49:16 13 end points were commingling points with RL

03:49:18 14 materials being produced on line 3?

03:49:20 15 MR. MURPHY: Objection to form. You

03:49:22 16 can answer.

03:49:24 17 A. That's correct.

03:50:02 18 Q. Do you recall at any time in the

03:50:06 19 testing of the ART stem disposal process whether

03:50:10 20 you had a problem with slurry in the pulper?

03:50:12 21 MR. MURPHY: Objection to form. I

03:50:14 22 don't think you intended to be unclear, but you

03:50:16 23 referred in your question to the testing of the

03:50:18 24 ART stem disposal process, and I just want to be

03:50:22 25 clear as to whether we're talking about the

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1 Donaher - Highly Confidential - Trade Secret

03:50:26 2 disposal process phase or the testing or design

03:50:26 3 phase.

03:50:28 4 MR. KILLORY: My question was

03:50:30 5 precisely designed to focus on the testing.

03:50:32 6 MR. MURPHY: With that clarification,

03:50:34 7 you can answer the question.

03:50:38 8 A. We had some difficulty with the fiber

03:50:40 9 in the pulper where we had -- the temperature got

03:50:46 10 too high, where the fiber broke down to very

03:50:50 11 small pieces, unsuitable for pressing.

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03:50:54 12 Q. Did that problem recur during the

03:50:56 13 operational phase of the ART stem disposal
03:51:00 14 process?
03:51:02 15 A. I'm not aware of any specific
03:51:04 16 instance, but it's possible because it could
03:51:12 17 happen if you had a malfunction of your steam
03:51:14 18 sparger or your temperature control.
19 (Donaher Exhibit 7 for
20 identification, Park 500 RL processing lab shift
21 technician T-3 training manual, first edition
22 1994.)
03:51:56 23 Q. Ms. Donaher, the court reporter has
03:52:02 24 just handed you a document marked as Donaher
03:52:02 25 Exhibit number 8 -- is that correct? 7.

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1 Donaher - Highly Confidential - Trade Secret
03:52:12 2 Donaher Exhibit Number 7 is a
03:52:12 3 document or manual entitled "Park 500 RL
03:52:16 4 processing lab shift technician T-3 training
03:52:20 5 manual, first edition 1994." It's Bates stamped
03:52:22 6 PA 445748, with production numbers 2030807182,
03:52:36 7 and concluding Bates number is 20 -- I'm sorry,
03:52:38 8 PA 445831, production number 2030807265.
03:52:44 9 Have you ever seen this manual
03:52:48 10 before?
03:52:48 11 MR. MURPHY: Objection. Are you
03:52:54 12 asking the witness to read this manual carefully
03:52:54 13 or in any detail?
03:52:58 14 MR. KILLORY: No. It's a very thick

03:53:00 15 manual. I'm going to have very limited questions
03:53:00 16 on it.

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03:53:02 17 Q. My first question is, looking at --
03:53:04 18 obviously it's a Xeroxed copy as produced to us
03:53:08 19 from Philip Morris, but apart from the fact that
03:53:12 20 it's a Xeroxed copy, have you seen a manual that
03:53:12 21 looks like this before?

03:53:14 22 A. No, I haven't.

03:53:16 23 Q. Could you turn to -- the Bates
03:53:18 24 stamping is consecutive, there's not a page
03:53:22 25 number at the bottom. It's PA 445790. Just

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1 Donaher - Highly Confidential - Trade Secret
03:53:28 2 about midway through the document.
03:53:30 3 (Witness complies.)

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03:53:38 4 Q. On the page labeled "Solubles
03:53:42 5 determination," the third paragraph down, the
03:53:46 6 bolded words, "Base web solubles," that paragraph
03:53:50 7 reads, "Base web solubles are a measurement of
03:53:52 8 the dissolved solute in the base web. This is
03:53:56 9 the basic, unlined basic, refined tobacco sheet
03:54:00 10 before the denitrated, concentrated and flavored
03:54:02 11 juice," "juice" is in quotes, "is reapplied to
03:54:06 12 make the final finished product.

03:54:08 13 "Base web solubles are important in
03:54:10 14 that they will directly affect the finished sheet
03:54:12 15 solubles at all times. All else being equal, the

03:54:16 16 higher the direct -- the base web solubles, the
03:54:18 17 higher the finished sheet solubles."
03:54:22 18 Is this an accurate description of
03:54:24 19 the base web solubles?
03:54:30 20 MR. MURPHY: In what respect?
03:54:32 21 Q. Your understanding as to base web
03:54:34 22 solubles.
03:54:38 23 A. I -- the terminology "dissolved
03:54:40 24 solute" doesn't mean anything particular to me.
03:54:46 25 Q. How about the description of the base

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1 Donaher - Highly Confidential - Trade Secret
03:54:48 2 web? Is that accurate?
03:55:02 3 MR. MURPHY: Objection to form. You
03:55:02 4 can answer.
03:55:06 5 A. It's very, very ambiguous. Tobacco
03:55:18 6 sheet is not exactly what base web is. I've
03:55:28 7 never heard of size or liquor being called
03:55:32 8 juice.
03:56:02 9 MR. KILLORY: Would you mark that as
03:56:04 10 Exhibit 8, please.
11 (Donaher Exhibit 8 for
12 identification, The Paper Making Process
13 Language, Park 500 division of Philip Morris.)
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03:56:32 14 Q. Donaher Exhibit 8 that the court
03:56:34 15 reporter has just handed you is a document
03:56:36 16 entitled "The Paper Making Process Language, Park

03:56:42 17 500 division of Philip Morris." The Bates stamp
03:56:44 18 number on the first page is PA 266704. The
03:56:48 19 production number is 2030048051. The Bates stamp
03:56:54 20 number, the last page, is PA 266711. The
03:56:56 21 production number is 2030048058.

03:57:00 22 I will represent to you that in my
03:57:06 23 understanding this was in the form it was
03:57:06 24 produced, and that it came from your files
03:57:08 25 according to the Philip Morris production

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1 Donaher - Highly Confidential - Trade Secret
03:57:14 2 materials.

03:57:20 3 Could you turn to 2030048055. It's
03:57:28 4 the fifth page of Exhibit 8.

03:57:28 5 (Witness complies.)

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03:57:32 6 Q. The first question as to this
03:57:34 7 document generally, do you recall seeing this
03:57:34 8 document before?

03:57:40 9 A. I think this document was one of
03:57:44 10 several that I -- not of several, of many that I
03:57:48 11 accumulated when I first came to the plant to try
03:57:48 12 to learn.

03:57:50 13 Q. Do you recall reading the document?

03:57:54 14 A. I don't recall reading it
03:57:56 15 specifically. I may have flipped through it.

03:57:56 16 Q. On the page that I referenced, the
03:58:00 17 fifth page, under the Js, it has "Juice, same as
03:58:08 18 liquor." Do you recall ever reading that?

03:58:10 19 A. No.
03:58:12 20 Q. You don't refer to juice -- to liquor
03:58:14 21 as juice?
03:58:16 22 A. No, I don't.
03:58:18 23 Q. To be clear, we're talking about
03:58:18 24 liquor and juice in the context of the RL
03:58:22 25 production process.

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1 Donaher - Highly Confidential - Trade Secret
03:58:26 2 A. Okay.
03:58:26 3 MR. MURPHY: As opposed to orange
03:58:28 4 juice.
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03:58:28 5 Q. As opposed to lay definitions of
03:58:30 6 liquor and juice. You can put that aside.
03:58:44 7 What was your work on the -- what did
03:58:48 8 your work on the centrifuge sludge problem
03:58:52 9 entail?
03:58:52 10 MR. MURPHY: Objection to form. I
03:58:56 11 think the question involves a characterization
03:58:58 12 that may be without foundation. You can answer
03:59:06 13 the question or Mr. Killory can rephrase it.
03:59:08 14 Q. Do you understand the question?
03:59:08 15 A. Are you asking what my objective was,
03:59:12 16 the purpose?
03:59:12 17 Q. Yes.
03:59:14 18 A. The purpose was to look at taking the
03:59:24 19 fibers from the centrifuge sludge or centrifuge

03:59:28 20 sludge themselves and incorporating it back into
03:59:30 21 the process as fiber as opposed to disposing of
03:59:36 22 it.
03:59:36 23 Q. At the time you were given the
03:59:40 24 assignment, the centrifuge sludge was disposed
03:59:42 25 of?

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1 Donaher - Highly Confidential - Trade Secret
03:59:44 2 MR. MURPHY: Do we have a time yet?
03:59:44 3 MR. KILLORY: Mm-mm.
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03:59:46 4 Q. What was the existing process at the
03:59:50 5 time you were given the assignment?
03:59:50 6 MR. MURPHY: Well, let's put a date
03:59:52 7 on this, because right now it's very unclear as
03:59:54 8 to what we're talking about.
03:59:56 9 MR. KILLORY: We'll get the date. I
03:59:58 10 just have a question --
03:59:58 11 MR. MURPHY: We don't even know if
04:00:00 12 this is prior to March 24, 1994. So let's
04:00:02 13 establish a date and do this in an orderly
04:00:06 14 fashion.
04:00:06 15 Q. Do you recall whether it was prior to
04:00:08 16 March of 1994 that you were given the centrifuge
04:00:12 17 sludge assignment?
04:00:14 18 A. I believe it was, but I'm --
04:00:16 19 Q. Do you -- I'm sorry. Do you remember
04:00:18 20 when, what the date was of the assignment?
04:00:20 21 A. No, I don't.

04:00:22 22 Q. At the time you were given the
04:00:24 23 assignment, was centrifuge sludge disposed of?
04:00:36 24 A. Yes, it was.
04:00:40 25 Q. What is centrifuge sludge?

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1 Donaher - Highly Confidential - Trade Secret
04:00:48 2 A. It's material from the tobacco
04:00:56 3 that's -- from the tobacco liquor that's
04:01:02 4 centrifuged out in the last stage of liquor
04:01:02 5 cleanup.
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04:01:06 6 Q. Is this material from the liquor
04:01:08 7 cleanup fiber?
04:01:14 8 A. The majority of it is fiber.
04:01:22 9 Q. And this is generated from the liquor
04:01:22 10 cleanup, not the denitration centrifuge; is that
11 correct?
04:01:28 12 MR. MURPHY: Objection to form. You
04:01:28 13 can answer.
04:01:30 14 A. Can you say the question -- it
04:01:32 15 doesn't make sense.
04:01:32 16 Q. I understand there's a denitration
04:01:36 17 centrifuge as well. Do you have any knowledge as
04:01:38 18 to that?
04:01:40 19 A. Yes, there is.
04:01:42 20 Q. And the centrifuge sludge we're
04:01:46 21 talking about here is generated from the liquor
04:01:48 22 cleanup centrifuge; is that correct?

04:01:50 23 A. Yes, it is.
24 (Donaher Exhibit 9 for
25 identification, C&I closeout report.)

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1 Donaher - Highly Confidential - Trade Secret

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04:02:40 2 Q. Ms. Donaher, I don't have detailed
04:02:42 3 questions on Exhibit 9. It appears to be a --
04:02:44 4 it's labeled "C&I closeout report." "Problem,
04:02:48 5 centrifuge sludge is removed from the RL process
04:02:52 6 resulting in disposal cost and yield loss. Start
04:02:56 7 date, November 2, 1992. Solutions and date
04:02:58 8 implemented, this decision was made to
04:03:00 9 discontinue this project in November 1993. The
04:03:04 10 closeout date, November 1993."

04:03:06 11 MR. MURPHY: Just for the record,
04:03:06 12 this appears to be a number of different
04:03:10 13 documents. I don't know how this was produced.
04:03:14 14 I'm not making any representation that it was not
04:03:16 15 produced --

04:03:18 16 MR. GOLDBLATT: It was produced in
04:03:22 17 this matter. It says, "I am attaching memoranda
04:03:22 18 relating to this project."

04:03:24 19 MR. KILLORY: That reminds me, I
04:03:24 20 should be giving the Bates stamp number for
04:03:34 21 this. It's PA 315999. It runs through PA
22 316017. The production numbers are 2025323903
04:03:54 23 through 2025323921. As Mr. Goldblatt indicated,
04:03:54 24 this was in the form as it was produced to Philip

04:03:56 25 Morris.

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04:03:58 2 Q. Do you recognize this closeout

04:04:00 3 report?

04:04:00 4 A. Yes, I do.

04:04:02 5 Q. And what is it?

04:04:02 6 A. It's a standard report that was

04:04:06 7 filled out at the end of this project by me.

04:04:10 8 Q. You prepared this report?

04:04:12 9 A. Yes.

04:04:12 10 Q. What does C&I stand for?

04:04:16 11 A. It stands for control and

04:04:16 12 improvement.

04:04:20 13 Q. What conclusion does this reflect

04:04:22 14 with regard to the centrifuge sludge project that

04:04:26 15 you worked on?

04:04:32 16 A. It states that that the project was

04:04:34 17 discontinued.

04:04:38 18 Q. So that you discontinued the effort

04:04:44 19 to find a means to recirculate the fibrous

04:04:46 20 materials from the centrifuge sludge in the RL

04:04:48 21 process?

04:04:50 22 MR. MURPHY: Objection to form. You

04:04:52 23 can answer.

04:04:54 24 A. It means we discontinued any efforts

04:05:00 25 to reincorporate centrifuge sludge in the RL

1 Donaher - Highly Confidential - Trade Secret

04:05:04 2 process.

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04:05:06 3 Q. So centrifuge sludge continued to be

04:05:08 4 disposed of as you described it being done

04:05:10 5 earlier?

04:05:10 6 A. That's correct.

04:05:12 7 Q. Do you know what the quantity of

04:05:14 8 centrifuge sludge generated in a day's operation

04:05:20 9 of the RL process is?

04:05:22 10 A. I don't know, no. Not exactly.

04:05:30 11 Q. Do you have any idea -- as a

04:05:32 12 percentage of the raw materials coming through

04:05:34 13 the line, do you know what percentage the

04:05:38 14 centrifuge sludge would represent?

04:05:44 15 A. 1 to 2 percent. But that's just an

04:05:46 16 approximation.

04:05:50 17 Q. I don't have any other questions on

04:05:52 18 that document. You mentioned earlier that you

04:05:56 19 worked on a padding problem project; is that

04:06:02 20 correct?

04:06:02 21 A. Yes, I do.

04:06:06 22 Q. What was your assignment in

04:06:08 23 connection with the padding problem?

04:06:10 24 A. My assignment was to lead an effort

04:06:14 25 to determine some means of eliminating problems

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04:06:18 2 with RL pads.

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04:06:26 3 Q. What are RL pads?

04:06:28 4 A. Pads are a major problem to our

04:06:32 5 customers in the primaries. They're caused -- or

04:06:38 6 they are blobs of pieces of RL stuck together to

04:06:44 7 form a big, hard clump of varying size and

04:06:46 8 thickness.

04:06:48 9 Q. And when you say "customers" in your

04:06:50 10 prior response, to whom are you referring?

04:06:52 11 A. I'm talking about customers in the

04:06:54 12 primaries that receive our product.

04:06:56 13 Q. That's the Philip Morris facilities

04:06:58 14 to whom you send the RL product, finished

04:07:00 15 product?

04:07:00 16 A. That's correct.

04:07:04 17 Q. What are the causes of RL padding?

04:07:10 18 A. The causes we identified as a

04:07:14 19 result -- during the course of this work were the

04:07:22 20 OV level of the product going into the container,

04:07:26 21 the solubles level, and the uniformity of the RL

04:07:30 22 in the container itself.

04:07:32 23 Q. By "the OV level," does that refer to

04:07:36 24 oven volatiles?

04:07:38 25 A. Yes, it does.

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04:07:38 2 Q. And the solubles, would it be high

04:07:42 3 soluble content that would result in padding?

04:07:44 4 MR. MURPHY: Objection to form. You

04:07:46 5 can answer the question.

04:07:50 6 A. There was an interaction between

04:07:56 7 solubles and moisture. When you had high

04:08:00 8 moisture and higher solubles, you had more pads.

04:08:04 9 Q. Did you ever arrive at a solution to

04:08:06 10 the problem?

04:08:08 11 A. Yes, we did.

04:08:10 12 Q. And what was that solution?

04:08:10 13 MR. MURPHY: Just to be clear, when

04:08:14 14 you say "you," are you using "you" as in Philip

04:08:18 15 Morris or "you" as in Denise Donaher?

04:08:20 16 Q. You as a leader of the team designing

04:08:24 17 the task of coming up with the solution to the

04:08:28 18 problem. Did the team arrive at a solution to

04:08:30 19 the padding problem?

04:08:32 20 MR. MURPHY: Objection to the form.

04:08:32 21 You can answer the question.

04:08:32 22 A. Yes, we did.

04:08:34 23 Q. And what was that solution?

04:08:36 24 A. The solution was an improved means of

04:08:42 25 distributing the RL product inside the container.

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04:08:46 2 Q. And what was that improved means of

04:08:48 3 distributing?

04:09:00 4 A. We used a series of conveyors with

04:09:02 5 variable speeds that layered the tobacco --

04:09:06 6 layered the RL into the container, in the hog's

04:09:10 7 head.

04:09:12 8 MR. KILLORY: Could you mark that as

04:09:16 9 Exhibit 10.

10 (Donaher Exhibit 10 for

11 identification, Broke refeed chart.)

04:09:42 12 Q. Ms. Donaher, the court reporter has

04:09:44 13 marked as Exhibit 10 a one-page document produced

04:09:48 14 by Philip Morris with the Bates stamp number PA

04:09:54 15 539595, the production number 2030054866. It is

04:10:02 16 titled "Broke refeed chart." The bottom of the

04:10:02 17 page says, "Pad team, July 8, 1993."

04:10:10 18 Do you recognize this document?

04:10:18 19 A. I may have seen it.

04:10:18 20 Q. Do you know whether you would have

04:10:20 21 seen it in the context of working on the pad

04:10:24 22 problem project that we were just discussing?

04:10:26 23 MR. MURPHY: Objection to form. You

04:10:28 24 can answer.

04:10:40 25 A. It's likely.

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04:10:40 2 Q. What is broke?

04:10:46 3 A. Broke in the context of this document

04:10:48 4 or broke --

04:10:50 5 Q. Broke in the context of this

04:10:52 6 document. What's being referred to here?

04:10:56 7 MR. MURPHY: Objection to form. You

04:10:58 8 can answer.

04:11:06 9 A. I'm having to refresh my memory on

04:11:08 10 what this document is.

04:11:10 11 Q. I understand.

04:11:38 12 A. It's not clear to me in this case

04:11:38 13 what exactly broke is. But generally it would

04:11:42 14 refer to pounds of product, of RL product or

04:11:48 15 pads. This may have been a result of a pad

04:11:48 16 testing that was put back in the broke pulp. I

04:11:54 17 don't know if it was product that was produced

04:11:54 18 during these tests or the pads themselves, or

04:11:58 19 both.

04:12:02 20 Q. Pads, when you refer to pads in that

04:12:04 21 context, it would be pads produced by the testing

04:12:06 22 as well?

04:12:08 23 MR. MURPHY: Objection to form. If

04:12:10 24 you understand the question, you can answer it.

04:12:14 25 Q. Let me ask a different question. I

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1 Donaher - Highly Confidential - Trade Secret

04:12:14 2 think that was imprecise. When your customers

04:12:20 3 would receive pads in the RL product, would they

04:12:26 4 send it back to you, the pads?

04:12:28 5 A. Are we talking about this -- in the

04:12:30 6 context of this document? Are we talking about

04:12:32 7 generally speaking?

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04:12:34 8 Q. First start, generally speaking.

04:12:36 9 We'll come back to the document.

04:12:36 10 A. Generally speaking, yes, the pads

04:12:40 11 that our customers have left over after

04:12:44 12 processing are returned to Park 500.

04:12:50 13 Q. What is done with the pads that are

04:12:50 14 returned from Park 500's customers?

04:12:52 15 A. They're fed into the broke pulper.

04:12:58 16 Q. And from the broke pulper they go

04:12:58 17 where?

04:13:02 18 A. The broke pulper ends back in the

04:13:04 19 blend pulper.

04:13:06 20 Q. Which is back at the start of the RL

04:13:08 21 process?

04:13:08 22 A. That's correct.

04:13:08 23 Q. Back to this specific document, I was

04:13:12 24 trying to understand, when you said the broke

04:13:16 25 referred to here could be the product of the

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1 Donaher - Highly Confidential - Trade Secret

04:13:20 2 testing or it could be the pads themselves -- is

3 that correct?

04:13:24 4 A. That's what I said, yes.

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04:13:24 5 Q. What did you mean by "the pads
04:13:26 6 themselves"?
04:13:28 7 A. Based on the left-hand column where
04:13:30 8 it says "Trial number," that leads me to believe
04:13:36 9 that these numbers were generated during our
04:13:38 10 trial period when we were trying to determine the
04:13:48 11 causes of pads. And we pad tested the product,
04:13:50 12 trial hogs' heads, at Semi-Works to find out the
04:13:54 13 quantity of pads inside each of these trials.
04:13:58 14 Q. In the testing that you did in the
04:14:04 15 course of the pad project, did you test for
04:14:06 16 soluble content of the pads?
04:14:08 17 A. Of the pads themselves? No.
04:14:10 18 Q. Are the pads something distinct from
04:14:10 19 the RL?
04:14:14 20 MR. MURPHY: Objection to form. You
04:14:18 21 can answer, if you understand the question.
04:14:20 22 A. My understanding is, pads are RL.
04:14:22 23 Q. It's RL stuck together.
04:14:24 24 A. That's correct.
04:14:26 25 Q. And your recollection is you did not

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1 Donaher - Highly Confidential - Trade Secret
04:14:30 2 test for the soluble content of that RL that was
04:14:34 3 stuck together in pads in the course of your pad
04:14:36 4 team project?
04:14:38 5 A. We didn't, no.
Page: 203
04:15:00 6 Q. Is there a lab that's part of the

04:15:02 7 Park 500 operation?
04:15:06 8 A. Yes.
04:15:10 9 Q. Do you work in the lab?
04:15:10 10 A. No, I don't.
04:15:12 11 Q. Have you at any time in your time at
04:15:14 12 Park 500?
04:15:18 13 A. I have never been in the lab
04:15:20 14 department, no.
04:15:26 15 Q. Do you understand what the lab
04:15:28 16 department does?
04:15:30 17 A. I have general knowledge of some of
04:15:32 18 their responsibilities.
04:15:32 19 Q. And what is that?
04:15:36 20 A. To provide process results to the
04:15:44 21 manufacturing operation.
04:16:04 22 Q. Is there a target level for the size
04:16:06 23 to be -- for the amount of size to be applied to
04:16:08 24 the base web in the RL production process?
04:16:12 25 MR. MURPHY: Objection to form. You

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1 Donaher - Highly Confidential - Trade Secret
04:16:16 2 can answer the question.
04:16:22 3 A. There's not a target level for the
04:16:26 4 amount of size that's added to the base web, no.
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04:16:32 5 Q. How is it determined how much size to
04:16:32 6 add to the base web in the production process?
04:16:38 7 MR. MURPHY: Objection to form. I

04:16:44 8 think the question is still unclear. But if you
04:16:44 9 understand the question, you can answer it.
04:16:50 10 A. Can you repeat the question again?
04:16:54 11 Q. Sure. In the production of RL, how
04:17:00 12 do you know how much size to add to the base web
04:17:02 13 to produce the finished product?
04:17:04 14 MR. MURPHY: Objection to form. You
04:17:06 15 can answer.
04:17:08 16 A. The amount of size is determined by
04:17:14 17 the finished sheet solubles specifications.
04:17:20 18 Q. And what are those specifications?
04:17:22 19 A. I don't know exactly what they are.
04:17:24 20 Q. Do you know generally what those
04:17:26 21 specifications are?
04:17:28 22 A. Approximately 43 percent to 48
04:17:32 23 percent finished sheet solubles.
04:17:38 24 Q. And by that you mean that 43 to 48
04:17:42 25 percent of the finished sheet consists of

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1 Donaher - Highly Confidential - Trade Secret
04:17:46 2 solubles?
04:17:46 3 A. That's correct. That's
04:17:50 4 approximately.
Page: 205
04:17:52 5 Q. That's the target level?
04:17:56 6 MR. MURPHY: Objection to form. I
04:17:58 7 don't want this to be unclear. That's solubles
04:18:02 8 by weight, by total weight.
04:18:04 9 Q. Is that what you meant, by weight?

04:18:04 10 A. Yes, it is. I think --
04:18:10 11 Q. Does -- go ahead.
04:18:10 12 A. I think you said that was the target
04:18:12 13 level. I think I said it was the specification.
04:18:18 14 Q. What's the difference between
04:18:18 15 specification and target level?
04:18:22 16 A. The specification is the range of
04:18:28 17 finished sheet solubles that would be considered
04:18:32 18 acceptable to ship the product. Acceptable
04:18:38 19 finished product. The target level is the
04:18:48 20 percent finished sheet solubles that are being
04:18:48 21 targeted at a given point in time.
04:18:54 22 Q. Is the target level always within the
04:19:00 23 specifications?
04:19:00 24 A. Yes, it is.
04:19:02 25 Q. The specifications set the upper and

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1 Donaher - Highly Confidential - Trade Secret
04:19:06 2 lower limit for the acceptable target?
04:19:08 3 MR. MURPHY: Objection to form. You
4 can answer.
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04:19:10 5 Q. Is that correct?
04:19:16 6 A. The targets would be -- the target
04:19:20 7 limits would be approximately the same as the
04:19:24 8 specification limits, yes.
04:19:32 9 Q. In your time at Park 500, have the
04:19:34 10 specification limits changed?

04:19:36 11 A. Not to my knowledge.
04:19:40 12 Q. How about the target level? Has that
04:19:42 13 changed?
04:19:46 14 A. There isn't one target level.
04:19:46 15 MR. MURPHY: Objection to form. You
04:19:48 16 can answer.
04:19:48 17 A. There isn't one target level.
04:19:52 18 Q. How is the target level determined?
04:20:00 19 A. The target level is determined by the
04:20:02 20 amount of liquor that's available to put back on
04:20:06 21 the base web.
04:20:12 22 MR. KILLORY: Would you mark that,
04:20:14 23 please.
24 (Donaher Exhibit 11 for
25 identification, Park 500 Inter-office

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1 Donaher - Highly Confidential - Trade Secret
2 correspondence from D. Barfield, T. Bullock, B.
3 Estes, C. Spellmeyer.)

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04:20:46 4 Q. What factors would affect the level,
04:20:46 5 the amount of liquor that's available to put back
04:20:50 6 on the base web?
04:20:54 7 MR. MURPHY: Objection to form. You
04:20:56 8 can answer.
04:21:10 9 A. Losses of solubles in the process.
04:21:12 10 Equipment problems, difficulties. Down time in
04:21:18 11 the liquor processing side, or variation of
04:21:18 12 solubles levels in the incoming feedstocks.

04:21:24 13 Q. So if there were low soluble levels
04:21:28 14 in the incoming feedstocks, that could lead to a
04:21:32 15 lower amount of liquor in inventory at any given
04:21:34 16 time; is that correct?
04:21:36 17 A. That's one of the things that
04:21:38 18 contributes.
04:21:42 19 Q. What happens if the soluble levels of
04:21:44 20 the incoming raw materials are higher than
04:21:50 21 usual?
04:21:50 22 MR. MURPHY: Objection to form. The
04:21:52 23 question is somewhat vague. But you can answer,
04:21:54 24 if you understand it.
04:21:56 25 A. I don't know what you mean, "higher

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1 Donaher - Highly Confidential - Trade Secret
04:21:58 2 than usual."
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04:21:58 3 Q. You mentioned lower soluble levels in
04:22:00 4 the incoming materials, the raw materials could
04:22:04 5 be one of the reasons for low liquor inventory.
04:22:10 6 My question is simply, are there situations where
04:22:14 7 high soluble levels on the incoming feedstock or
04:22:18 8 raw materials leads to high inventory levels of
04:22:22 9 liquor?
04:22:22 10 MR. MURPHY: Objection to form. Her
04:22:26 11 testimony speaks for itself. I move to strike
04:22:28 12 that portion of your question. You can answer
04:22:30 13 the remainder of the question.

04:22:34 14 A. The solubles level in the feedstocks
04:22:36 15 varies from low to high, and everywhere in
04:22:40 16 between.
04:22:42 17 Q. What's the range of variation, do you
04:22:42 18 know?
04:22:44 19 A. Approximately 40 -- 45 to 50.
04:23:02 20 Q. What's the basis for your knowledge
04:23:04 21 as to the range of soluble levels of incoming raw
04:23:08 22 materials?
04:23:14 23 A. We have a TQM, total quality measure,
04:23:20 24 of hot water solubles of feedstocks.
04:23:32 25 Q. Are there times where it's necessary

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1 Donaher - Highly Confidential - Trade Secret
04:23:34 2 to dispose of base web?
04:23:38 3 MR. MURPHY: Objection to form. You
04:23:40 4 can answer the question.
04:23:42 5 A. The only time I'm aware of disposing
04:23:44 6 of base web for any reason is possibly at startup
04:23:50 7 or shutdown situations.
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04:23:54 8 Q. So you're not aware, other than
04:23:56 9 startup and shutdowns, you're not aware of other
04:24:00 10 times where base web would be disposed of?
04:24:02 11 A. Not that I'm aware of, no, but I'm
04:24:02 12 not in the day-to-day operation.
04:24:04 13 Q. Would disposal of the base web affect
04:24:08 14 the amount of inventory of liquor available for
04:24:12 15 application to the base web?

04:24:14 16 MR. MURPHY: Objection to form. I
04:24:20 17 don't think the question makes sense, Ted.
04:24:20 18 A. It doesn't make sense to me.
04:24:22 19 Q. How is liquor -- from where is the
04:24:26 20 liquor produced in the RL process?
04:24:30 21 A. It's produced from the solubles in
04:24:30 22 the feedstocks.
04:24:32 23 Q. From the raw materials. And after
04:24:34 24 the liquor is extracted, the remainder of that
04:24:38 25 feedstock is the base web; is that correct?

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1 Donaher - Highly Confidential - Trade Secret
04:24:40 2 MR. MURPHY: Objection to form. You
04:24:44 3 can answer the question if you understand it.
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04:24:52 4 Q. Do you understand the question?
04:24:54 5 A. Could you repeat it?
04:24:58 6 Q. The liquor is extracted; is that
7 correct?
04:24:58 8 A. The liquor is extracted --
04:25:00 9 Q. From the raw materials.
04:25:02 10 A. That's correct.
04:25:04 11 Q. What is left in the raw materials
04:25:08 12 after the liquor is extracted?
04:25:12 13 MR. MURPHY: Objection to form. I
04:25:14 14 think we're just tripping over words here, and I
04:25:18 15 don't think you're being deliberately misleading
04:25:20 16 or vague.

04:25:22 17 MR. KILLORY: Why don't I try to
04:25:22 18 reword it.
04:25:24 19 MR. MURPHY: The liquor extracted is
04:25:28 20 I think part of what's confusing the witness, and
04:25:30 21 it's certainly confusing me.
04:25:32 22 MR. KILLORY: Let me rephrase it just
04:25:32 23 for purposes of a clear record.
04:25:34 24 Q. The RL process, and I realize this is
04:25:40 25 somewhat of an oversimplification, but in

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1 Donaher - Highly Confidential - Trade Secret
04:25:40 2 overview, the RL process involves separating the
04:25:48 3 solubles, which you've referred to as the liquor,
04:25:50 4 from the raw materials; is that correct?
04:25:54 5 MR. MURPHY: Objection to form. The
04:25:58 6 solubles are part of the raw materials. With
04:25:58 7 that clarification, if you understand the
04:26:00 8 question.

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04:26:00 9 Q. Do you have an understanding as to
04:26:02 10 whether solubles are separated from the base web
04:26:04 11 in the RL process?
04:26:06 12 A. They're removed or separated.
04:26:10 13 Q. And the base web continues through
04:26:16 14 the process, and the liquor that's been separated
04:26:18 15 continues through the process; is that correct?
04:26:22 16 MR. MURPHY: Objection to form. I
04:26:24 17 think the problem here, Ted, is, and we can ask
04:26:30 18 the witness to leave the room if you want for a

04:26:32 19 moment, and I can explain the terminological
04:26:32 20 problem I have with your question if you prefer
04:26:36 21 to do that. I'm willing to do that.

04:26:38 22 MR. KILLORY: I'll try to reword it
04:26:40 23 again.

04:26:42 24 MR. MURPHY: Okay.

04:26:42 25 Q. If you take a batch of materials on

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1 Donaher - Highly Confidential - Trade Secret
04:26:46 2 line 1 that's coming into the process, in the
04:26:52 3 course of the RL production process, that batch
04:27:00 4 of material is -- choose your word. Separated,
04:27:02 5 is "separated" not the right word for what
04:27:04 6 happens to the solubles versus the base web?

04:27:04 7 MR. MURPHY: Objection to form. You
04:27:06 8 can answer.

04:27:10 9 A. You could say separated or removed.

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04:27:12 10 Q. Okay. Let's say removed.

04:27:12 11 MR. MURPHY: What is separated or
04:27:14 12 removed?

04:27:16 13 MR. KILLORY: The base web, the
04:27:18 14 liquor is -- the solubles are separated from the
04:27:20 15 base web.

04:27:22 16 Q. Correct?

04:27:24 17 MR. MURPHY: Objection to form. I
04:27:26 18 think there's a very simple way to cut through
04:27:28 19 this, if you'll let me.

04:27:30 20 I would like to just tell you that
04:27:34 21 the word "base web" is being misused in your
04:27:40 22 question. Solubles are separated from tobacco
04:27:42 23 materials or fiber, and the resulting fibrous
04:27:46 24 material is known as base web. But I think it's
04:27:52 25 a misdescription to -- I think it's a

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1 Donaher - Highly Confidential - Trade Secret
04:27:54 2 misdescription to say that the solubles are being
04:27:56 3 separated from base web.
04:27:58 4 You can say they're being separated
04:27:58 5 from stock, from feedstock from the raw
04:28:02 6 materials, or from the tobacco, whichever
04:28:06 7 terminology you prefer. But I just want to keep
04:28:08 8 the record clear as to a term of art here that is
04:28:10 9 used in the process.
04:28:12 10 With that clarification, why don't
04:28:14 11 you ask another question.

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04:28:16 12 Q. Solubles, and the base web, have
04:28:20 13 their origins in the raw materials; is that
04:28:24 14 correct? Both come from the raw materials
04:28:26 15 originally.
04:28:28 16 A. Yes, that's correct.
04:28:28 17 MR. MURPHY: It's become
04:28:30 18 metaphysical.
04:28:32 19 Q. So you've now -- I realize there may
04:28:34 20 be other stray pieces, but let's just focus on
04:28:36 21 the solubles component and the base web

04:28:40 22 component. Okay? Do you have that in mind?
04:28:44 23 A. I have it in mind.
04:28:44 24 Q. If you run the base web because of
04:28:50 25 startup or shutdown reasons, or any other reason,

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1 Donaher - Highly Confidential - Trade Secret
04:28:52 2 if the base web is run, aren't you then left with
04:28:56 3 a higher level of solubles in inventory?
04:29:00 4 MR. MURPHY: Objection to form. I
04:29:04 5 still think that the question doesn't make sense.
04:29:06 6 MR. KILLORY: Let's let her try to
04:29:12 7 answer this one.

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04:29:12 8 Q. Do you understand this question?
04:29:26 9 MR. MURPHY: Ted, could you repeat
04:29:28 10 the question for the witness?
04:29:30 11 Q. If you run the base web because of
04:29:32 12 startup or shutdown reasons or any other reason,
04:29:36 13 if the base web is run, aren't you then left with
04:29:38 14 a higher level of solubles in inventory?
04:29:40 15 MR. MURPHY: Same objection. You can
04:29:42 16 answer.
04:29:44 17 A. If you did that, yes, provided you
04:29:48 18 had liquor and you were still running the rest of
04:29:52 19 the process, yes. But that's making a big
04:30:00 20 assumption that you're running the risk of the
04:30:02 21 process.
04:30:04 22 Q. Are there times when base web is run

04:30:04 23 that the rest of the process continues?
04:30:08 24 MR. MURPHY: Objection to form. You
04:30:08 25 can answer.

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1 Donaher - Highly Confidential - Trade Secret
04:30:16 2 A. If we're in a shutdown mode, it's
04:30:20 3 possible that we're running out of the stock
04:30:22 4 chest and running base web, when the rest of the
04:30:32 5 process has already been cleared out.
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04:30:40 6 Q. Could you take a look at Exhibit
04:30:44 7 Number 11, the one-page document. Bates stamp PA
04:30:54 8 592805, production number 2031263050. Have you
04:31:00 9 had a chance to look at it?
04:31:02 10 A. I'm familiar with the document.
04:31:06 11 Q. Have you seen the document before?
04:31:08 12 A. Yes, I have.
04:31:10 13 Q. In what context have you seen it?
04:31:14 14 A. In the course of familiarizing myself
04:31:16 15 with some of the procedures or processes within
04:31:22 16 the RL process, I came across this document on
04:31:24 17 the floor.
04:31:28 18 Q. It's entitled -- the subject line
04:31:28 19 says, "Procedure for finished products solubles
04:31:32 20 center line adjustment." What is the center line
04:31:36 21 being referred to here?
04:31:38 22 A. I would call it the target.
04:31:46 23 Q. And when it refers to FS, is that
04:31:48 24 finished sheet?

04:31:50 25 A. I believe so.

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04:31:52 2 Q. So this is a discussion of the

04:32:00 3 procedures to follow -- let me strike that.

04:32:02 4 When you say "target" in your last

04:32:04 5 response, you mean target in the sense we

04:32:06 6 described in your preceding testimony about five

04:32:08 7 minutes ago?

04:32:10 8 MR. MURPHY: Objection to form. You

04:32:10 9 can answer.

04:32:14 10 A. Yes. "Target" refers to what

04:32:16 11 finished sheet solubles level that is being

04:32:20 12 targeted at that point in time.

04:32:28 13 Q. And how could you achieve the changes

04:32:32 14 in that target or center line level, how

04:32:34 15 physically could that be achieved?

04:32:36 16 MR. MURPHY: I object to the form.

04:32:38 17 You can answer.

04:32:44 18 A. Can you try and rephrase that

04:32:46 19 question?

04:32:50 20 Q. How do you change the soluble target

04:33:10 21 level for the finished sheet? How do you effect

04:33:16 22 that change?

04:33:16 23 MR. MURPHY: Objection to form. I

04:33:20 24 would also like a clarification as to your use of

04:33:20 25 the word "you."

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04:33:22 2 Q. I'm sorry, that's unclear. In the

04:33:24 3 Park 500 operations producing RL, how are changes

04:33:28 4 in the target level for the finished sheet

04:33:30 5 effected?

04:33:32 6 A. Not being in operations, I'm not

04:33:44 7 aware of all the methods. Some of the ones I'm

04:33:44 8 aware of are changing the solubles level in the

04:33:54 9 size prep batches, or changing the -- I guess

04:34:00 10 it's pressure on the size press roll.

04:34:02 11 Q. When you say changing the pressure on

04:34:02 12 the size press roll, what do you mean?

04:34:08 13 A. The size is applied to the base web

04:34:16 14 through a size press, which is comprised of a

04:34:18 15 couple of rolls, and by changing the pressure,

04:34:24 16 that's the best way I can describe it, then you

04:34:26 17 could be affecting the amount of solubles that

04:34:32 18 are put onto the finished sheet.

04:34:32 19 Q. Changing the pressure would result in

04:34:36 20 a change in the amount of solubles applied to the

04:34:40 21 finished sheet?

04:34:42 22 A. I believe so. But I don't know what

04:34:46 23 that relationship is.

04:34:50 24 MR. KILLORY: Would you mark that.

25

(Donaher Exhibit 12 for

1 Donaher - Highly Confidential - Trade Secret
2 identification, Q 500 Park 500 section 6, the
3 line 1/2 SPC system.)

04:34:56 4 MR. MURPHY: Ted, I'm a little late
04:34:58 5 with this objection, but I'll make it just for
04:35:00 6 clarity. Solubles are not actually what's being
04:35:02 7 applied to the finished sheet.

04:35:04 8 MR. KILLORY: The size.

04:35:06 9 MR. MURPHY: That's actually not my
04:35:06 10 point. The solubles are being applied to base
04:35:08 11 web resulting in finished sheet.

04:35:12 12 MR. KILLORY: Okay.

04:35:12 13 MR. MURPHY: We're none of us
04:35:14 14 engineers, but some of these terms may matter in
04:35:16 15 terms of clarity. So I like to make them clear.

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04:35:48 16 Q. Ms. Donaher, when we've been
04:35:52 17 discussing solubles applied to the finished
04:35:54 18 sheet, at that stage of the production, do the
04:35:58 19 solubles include additives?

04:36:00 20 MR. MURPHY: Objection to form. If
04:36:04 21 you understand the question and its terminology,
04:36:06 22 you can answer.

04:36:10 23 A. What additives are you referring to,
04:36:12 24 or are you not referring to additives?

04:36:14 25 Q. Flavors, for example.

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04:36:16 2 A. Yes, they do include flavors.

04:36:18 3 MR. MURPHY: This has the same

04:36:18 4 defect, Ted we just discussed, solubles being

04:36:22 5 applied to finished sheet. Just to keep the

04:36:26 6 record clear, that's not what happens in the

04:36:26 7 process.

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04:36:32 8 Q. Could you just look at the cover of

04:36:38 9 Exhibit Number 12 that has just been handed to

04:36:38 10 you by the court reporter. It's Bates stamped PA

04:36:50 11 267301, production number 2030049035. The last

04:36:52 12 page of this rather long document is Bates

04:37:02 13 stamped PA 267376, production number 2030049110.

04:37:04 14 Have you seen -- the document is

04:37:10 15 entitled, Q 500 Park 500 section 6, the line 1/2

04:37:14 16 SPC system. Do you recognize this document?

04:37:30 17 A. I have a pretty good idea where it

04:37:32 18 came from.

04:37:32 19 Q. And where is that?

04:37:34 20 A. From a Q-1 manual.

04:37:36 21 Q. I'm sorry.

04:37:36 22 A. Q-1 manual.

04:37:38 23 Q. What is a Q-1 manual?

04:37:48 24 A. It's one of our training manuals that

04:37:48 25 is used to train employees about the development,

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04:37:54 2 the line 1, 2 SPC system, and the process by
04:37:56 3 which it was developed.

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04:38:00 4 Q. If you could turn to the page very
04:38:04 5 near the end, it's bearing the Bates stamp PA
04:38:12 6 267354, and the production number 2030049088.

04:38:18 7 MR. MURPHY: Having not had a chance
04:38:20 8 to read the whole document, Ted, do you know
04:38:24 9 whether there is any date on this document?

04:38:24 10 MR. KILLORY: I do not believe there
04:38:28 11 is. I won't swear to it, but from my review of
04:38:32 12 it, I believe there's not. There may be
04:38:34 13 something in there that indicates a date, but it
04:38:36 14 is not formally dated.

04:38:38 15 Q. Have you got the page in front of you
04:38:40 16 that I referred to?

04:38:40 17 A. Yes.

04:38:42 18 Q. At the top of the page it says,
04:38:46 19 "Controllable parameter, finished sheet
04:38:46 20 solubles." And then under that it says, "Control
04:38:56 21 moves," followed by some text. The first item
04:39:02 22 says, "Adjust size prep nip loading pressure up
04:39:10 23 or down as necessary. Do not exceed pressure
04:39:12 24 range of 16 to 40 PSI without supervisor
04:39:16 25 approval."

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04:39:18 2 Does that describe the adjustment to

04:39:22 3 the valve that you were describing in your answer
04:39:24 4 a few minutes ago?
04:39:28 5 A. I don't actually know whether it's a
04:39:30 6 valve or a knob or how the adjustment is actually
04:39:34 7 made.

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04:39:38 8 Q. What -- I'm sorry.

04:39:38 9 A. I'm just generally aware there is
04:39:40 10 such an adjustment.

04:39:40 11 Q. Do you know what the size press nip
04:39:44 12 is?

04:39:50 13 A. It's -- the nip is the point between
04:39:50 14 the two rolls. That's my understanding of the
04:39:54 15 nip.

04:40:04 16 Q. Do you know why it says "Do not
04:40:08 17 exceed pressure range of 16 to 40 PSI"?

04:40:14 18 A. I would just generally imagine that
04:40:18 19 whenever you start varying pressure beyond design
04:40:20 20 of equipment, it presents safety hazards. That's
04:40:26 21 just my general opinion.

04:40:38 22 Q. I should represent just for clarity,
04:40:46 23 and I neglected to say this before, I believe
04:40:46 24 that this document, which I don't think is dated,
04:40:48 25 comes from your files, as reflected on the Philip

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04:40:50 2 Morris production records.

04:40:56 3 Does this look like the kind of

04:40:56 4 document that is likely in your files?
04:40:58 5 MR. MURPHY: Objection to form. You
04:41:00 6 can answer.
04:41:04 7 A. I believe such a document was in my
04:41:06 8 files. This was a portion of the document that
04:41:10 9 was in my files.
04:41:30 10 MR. KILLORY: Would you mark that,
04:41:32 11 please.
12 (Donaher Exhibit 13 for
13 identification, Test request form, production
14 quality and technical services.)

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04:42:02 15 Q. Ms. Donaher, could you take a look at
04:42:04 16 Exhibit Number 13, which has just been handed to
04:42:06 17 you by the court reporter. It is Bates stamped
04:42:10 18 PA 403582 through 583, and production numbers are
04:42:26 19 2024796208 through 6209, two-page document
04:42:28 20 entitled, "Test request form, production quality
04:42:30 21 and technical services."
04:42:34 22 Under "Initiator of test," Sonny
04:42:36 23 Clarke, James Best, Denise Donaher and Dave
04:42:44 24 Mertz. Have you had a chance to look at the
04:42:46 25 document?

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04:42:48 2 MR. MURPHY: Do you want the witness
04:42:48 3 to read the document?
04:42:50 4 MR. KILLORY: I don't think that's
04:42:50 5 necessary. Just to look at it.

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04:42:52 6 Q. Have you had a chance to at least
04:42:54 7 look at the document?
04:42:54 8 A. Yes.
04:42:58 9 Q. Do you recognize the document?
04:43:04 10 A. I recognize it as one I wrote, and it
04:43:06 11 never went anywhere.
04:43:16 12 Q. When you say "it never went
04:43:16 13 anywhere," what do you mean?
04:43:18 14 A. The test request wasn't signed. It
04:43:22 15 was a thought that some of these procedures might
04:43:34 16 help the operators do a better job, make it more
04:43:40 17 clear to them.
04:43:42 18 Q. The test was never effected?
04:43:46 19 A. It was never run, no.
20 (Donaher Exhibit 14 for
21 identification, test request form dated August
22 12, 1993.)
04:44:50 23 Q. Ms. Donaher, the document that's just
04:44:52 24 been handed to you as Exhibit Number 14 is Bates
04:44:58 25 stamped PA 538612, production number 2030053619.

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1 Donaher - Highly Confidential - Trade Secret
04:45:00 2 It's another test request form dated August 12,
04:45:06 3 1993, initiator of test, Denise Donaher. Do you
04:45:10 4 know whether this test was ever effected?
04:45:10 5 A. Yes, it was.
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04:45:12 6 Q. Could you describe what the test

04:45:14 7 entailed?

04:45:18 8 A. Exactly what the test request says;

04:45:22 9 that three hogs' heads of RL was produced at a

04:45:28 10 target of 53 percent finished sheet solubles to

04:45:30 11 be subjectively evaluated.

04:45:34 12 Q. Did you initiate this test at

04:45:36 13 anyone's direction?

04:45:52 14 A. I can't recall if there was any one

04:45:56 15 specific direction. There was some curiosity as

04:46:00 16 to what would happen in terms of subjectives.

04:46:00 17 And this was a good opportunity because it was in

04:46:06 18 the middle of the pad team trials and we had some

04:46:08 19 flexibility to do some testing more

04:46:08 20 conveniently.

04:46:12 21 Q. Why did the fact that it was in the

04:46:12 22 middle of the pad team trials give you more

04:46:16 23 flexibility to do more testing?

04:46:20 24 A. The operators were already in the

04:46:22 25 mode of once a day, that we were shooting for

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04:46:24 2 some specific targets and trying to control the

04:46:26 3 process to the best of their ability within a

04:46:28 4 small time frame.

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04:46:34 5 Q. You said there was some curiosity as

04:46:36 6 to what would happen in terms of subjectives.

04:46:40 7 Did you have any conversations with anyone on

04:46:42 8 that topic?

04:46:46 9 A. I think we've had general discussion
04:46:48 10 that it's frustrating for us when we throw
04:46:52 11 solubles down the drain. And there are times
04:46:56 12 when that happens, and in doing that we always
04:46:58 13 wonder, can we improve the economics of our
04:47:00 14 process by not having to throw them away.

04:47:08 15 And for those occasions, we wanted to
04:47:08 16 confirm or reconfirm what we had already heard,
04:47:12 17 that if you increase the solubles above what the
04:47:14 18 current spec limit was, it wouldn't taste very
04:47:18 19 good subjectively.

04:47:18 20 Q. And the then current spec limit up at
04:47:22 21 the upper end was what?

04:47:24 22 MR. MURPHY: Objection to form. You
04:47:26 23 can answer.

04:47:26 24 A. The upper spec limit for finished
04:47:28 25 sheet solubles is approximately 48 percent or 49

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04:47:32 2 percent.

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04:47:36 3 Q. How did you achieve the 53 percent --
04:47:38 4 did you achieve the 53 percent soluble level?

04:47:40 5 MR. MURPHY: Objection. We're going
04:47:42 6 back and forth between a test and a spec limit
04:47:46 7 for production of finished sheet solubles. Are
04:47:48 8 you talking now, again, about the test?

04:47:52 9 Q. That's right. The test where you

04:47:56 10 proposed to achieve a 53 percent soluble level.
04:47:56 11 Did you, in the test, achieve that 53 percent
04:48:00 12 soluble level for subjective evaluation?
04:48:04 13 A. I believe so, with some difficulty.
04:48:06 14 Q. What was the difficulty?
04:48:16 15 A. The tobacco will only absorb so much
04:48:20 16 size or -- no matter what you do, and the other
04:48:32 17 reason why it was convenient to do it during the
04:48:34 18 pad team test, and related to the difficulty, is
04:48:36 19 that the base web solubles, we were running them
04:48:40 20 on the higher side so that the base web was a
04:48:48 21 little bit higher solubles, and then you add the
04:48:48 22 size to that.
04:49:00 23 Q. The base web solubles that you were
04:49:02 24 running at that time had higher solubles, is that
04:49:04 25 what you said?

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04:49:10 2 A. They were higher than what could
04:49:14 3 normally be run. Running them high is
04:49:14 4 difficult.

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04:49:30 5 Q. To achieve that higher level did you
04:49:30 6 have to discard some of the base web?
04:49:30 7 MR. MURPHY: Objection to form. I
04:49:32 8 think that misstates and mischaracterizes her
04:49:34 9 testimony. But you can answer the question if
04:49:34 10 you understand what you are being asked.

04:49:40 11 A. Disposing of base web, I had nothing
04:49:44 12 to do with it.
04:49:46 13 Q. Where did you get the solubles to put
04:49:48 14 on the base web to achieve this test 53 percent
04:49:52 15 soluble level?
04:49:52 16 A. Solubles that were -- would normally
04:49:56 17 be in the process.
04:50:00 18 Q. Were they solubles that were then in
04:50:00 19 inventory?
04:50:02 20 A. Yes.
04:50:02 21 MR. MURPHY: Objection to form. What
04:50:06 22 do you mean by "then in inventory"?
04:50:08 23 MR. KILLORY: I think she answered
04:50:10 24 the question.
04:50:12 25 Q. Do you know if --

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1 Donaher - Highly Confidential - Trade Secret
04:50:14 2 MR. MURPHY: Did you understand the
04:50:16 3 question?
04:50:16 4 THE WITNESS: I understood it to mean
04:50:18 5 at the time of this test.
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04:50:20 6 Q. Did the finished sheet produced by
04:50:22 7 this test with the 53 percent solubles have a
04:50:26 8 greater nicotine content than typical RL finished
04:50:30 9 sheet?
04:50:32 10 A. I have no knowledge about nicotine
04:50:34 11 contents on this test material or regular RL.
04:50:40 12 Q. Was there any testing done to this

04:50:40 13 test 53 percent soluble material for nicotine or
04:50:44 14 alkaloid content?
04:50:46 15 A. Not to my knowledge.
04:50:52 16 Q. Did any of this test material end up
04:50:54 17 in RL product that was shipped to your
04:50:58 18 customers?
04:50:58 19 MR. MURPHY: Objection to form. You
04:51:00 20 can answer.
04:51:00 21 A. No.
04:51:02 22 Q. What did you do with it?
04:51:06 23 A. Three hogs' heads were made and sent
04:51:14 24 to R&D Semi-Works to be processed into
04:51:18 25 cigarettes, to be subjectively evaluated.

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04:51:20 2 Q. And do you know what happened in the
04:51:24 3 subjective evaluation?
04:51:28 4 A. I recall being told that the results
04:51:34 5 were unacceptable, the subjectives were negative
04:51:36 6 as compared to the normal RL product.
04:51:38 7 Q. Do you recall who told you that?
04:51:44 8 A. It may have been Jay Swain.
04:51:48 9 Q. Who is Jay Swain? What position does
04:51:50 10 Jay Swain hold?
04:51:52 11 MR. MURPHY: As of --
04:51:52 12 Q. As of the date he told you that the
04:51:54 13 subjectives were unacceptable.

04:52:00 14 A. He was a flavor scientist, or I don't
04:52:04 15 know what his title is, in R&D.
04:52:08 16 Q. The date of the test request form for
04:52:12 17 this test is August 12th, 1993. Do you know when
04:52:16 18 the testing occurred?
04:52:18 19 A. This testing?
04:52:20 20 Q. That's right. The 53 percent soluble
04:52:22 21 level testing.
04:52:28 22 A. This test request says it was
04:52:30 23 conducted on August the 20th. So I would imagine
04:52:34 24 it was on or around that time. But I don't know
04:52:36 25 the exact date.

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04:52:38 2 Q. To the best of your recollection,
04:52:40 3 that testing went off, occurred approximately at
04:52:46 4 the time proposed in this --

04:52:46 5 A. Could have been a week or two. But
04:52:48 6 no more than that.

04:52:54 7 MR. KILLORY: Could you mark that,
04:52:54 8 please.

9 (Donaher Exhibit 15 for
10 identification, document Bates stamped PA 403521
11 through PA 403527.)

04:53:34 12 Q. Ms. Donaher, the court reporter has
04:53:34 13 handed you a document that's been marked as
04:53:36 14 Donaher Exhibit 15. It's Bates stamped PA 403521
04:53:48 15 through PA 403527. The production number is

04:54:00 16 2024796056, concluding with 2024796062.
04:54:10 17 Take a look at the document, please.
04:54:10 18 You don't need to -- I'm not going to ask you
04:54:12 19 detailed questions about the contents, but I
04:54:16 20 would like you to familiarize yourself with it.
04:54:18 21 MR. MURPHY: I take that to mean she
04:54:20 22 does not need to read it with care?
04:54:20 23 Q. Don't read all the details. Just
04:54:24 24 familiarize yourself with it. I would point out
04:54:26 25 to you, by the way, that on the last page your

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1 Donaher - Highly Confidential - Trade Secret
04:54:30 2 name is mentioned.
04:55:34 3 MR. MURPHY: I just pointed out to
04:55:36 4 the witness that her name is also mentioned on
04:55:36 5 page 4.
04:55:44 6 MR. KILLORY: Yes. I hadn't noticed
04:55:56 7 it.
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04:55:58 8 Q. You have had a chance to look at the
04:56:02 9 document. The problem identified on the cover
04:56:04 10 is, and I quote, "Improve broke and pad feedback
04:56:08 11 to increase yield." Does this document relate to
04:56:12 12 the pad project that we've been discussing
04:56:16 13 earlier in your testimony?
04:56:16 14 MR. MURPHY: Objection to form. You
04:56:18 15 can answer.
04:56:20 16 A. I can't see any link between the

04:56:22 17 two.
04:56:26 18 Q. Do you recall seeing this document
04:56:28 19 before?
04:56:30 20 A. No, I don't.
04:56:34 21 Q. Who is Bucky Shope? S-H-O-P-E.
04:56:40 22 A. He's a production supervisor at Park
23 500.
04:56:44 24 Q. Did you say he or she?
04:56:46 25 A. He.

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04:56:50 2 Q. Do you recall any conversations with
04:56:54 3 anyone about this problem of improving the broke
04:56:58 4 and pad feedback to increase yield?
04:57:06 5 A. Not in regard to this specific
04:57:10 6 effort.
04:57:10 7 Q. How about more generally, apart from
04:57:12 8 this effort, the problem of improving broke and
04:57:16 9 pad feedback? Do you recall any conversations on
04:57:20 10 that subject?
04:57:20 11 MR. MURPHY: Objection to form.
04:57:26 12 A. I recall having some general
04:57:26 13 discussions.
04:57:30 14 Q. With whom would you have had those
04:57:32 15 discussions?
04:57:34 16 MR. MURPHY: Objection to form. You
04:57:36 17 can answer.
04:57:40 18 A. I don't know who.

04:57:42 19 Q. What was the nature of the problem?
04:57:46 20 MR. MURPHY: Objection to form. You
04:57:48 21 can answer the question.
04:57:58 22 A. I think the concern is that broke is
04:58:00 23 already -- the fibers have already been refined,
04:58:04 24 and by sending them back to the beginning of the
04:58:06 25 process, they're already so small that you are

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04:58:10 2 going to just lose them. That's the general
04:58:12 3 concern. And I believe was the main focus of
04:58:14 4 this effort.
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04:58:16 5 Q. On the second page of Exhibit 15,
04:58:22 6 which is actually labeled page 1, after the cover
04:58:22 7 page, under "Evidence of the problem," you see
04:58:32 8 item P 2, it says, "Evidence of the problem,
04:58:36 9 list/illustrate evidence that demonstrates
04:58:38 10 chronic nature of the problem and the size of
04:58:42 11 it."
04:58:44 12 Item 1 under that heading says, "No
04:58:48 13 accurate accounting system for broke taken to
04:58:50 14 dumpsters (waste)." Is it true there is no
04:58:56 15 accurate accounting for broke taken to dumpsters
04:58:58 16 at Park 500?
04:59:00 17 MR. MURPHY: Objection to form. You
04:59:04 18 can answer the question, if you know.
04:59:04 19 A. I don't know one way or the other.

04:59:08 20 Q. Do you have any knowledge on the
04:59:08 21 subject of accounting for discarded broke?
04:59:18 22 A. "Discarded broke" doesn't make sense
04:59:20 23 to me.
04:59:20 24 Q. Okay. Broke that is not recycled in
04:59:24 25 the process but taken to the dumpster. That's

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1 Donaher - Highly Confidential - Trade Secret
04:59:26 2 what I mean by "discarded broke."
04:59:32 3 A. I don't know. I don't know.
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04:59:44 4 Q. Number 4 in that same list on page 1,
04:59:50 5 it's the second page of Exhibit 15, item number
04:59:52 6 4, says, "Refine fibers being lost through the
04:59:54 7 wire." Do you know what that means?
05:00:08 8 A. I interpret it to mean that fiber
05:00:08 9 that has been refined a significant amount of
05:00:12 10 times going back through the process as broke,
05:00:18 11 would tend to be smaller and fall through the
05:00:20 12 wire.
05:00:20 13 Q. And the wire being referred to is
05:00:22 14 what?
05:00:24 15 A. Is a Fourdrinier.
05:00:26 16 Q. The Fourdrinier press?
05:00:30 17 A. The Fourdrinier.
05:00:30 18 Q. The Fourdrinier. The broke --
05:00:36 19 MR. MURPHY: I'm sorry, I don't
05:00:38 20 understand that.
05:00:40 21 MR. KILLORY: I had said "press," and

05:00:40 22 I think I was being corrected that Fourdrinier --
05:00:42 23 Q. You do not understand to have the
05:00:46 24 word "press" attached to the word "Fourdrinier";
25 is that correct?

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05:00:48 2 MR. MURPHY: It's not a press.

05:00:48 3 THE WITNESS: That's what I said.

05:00:50 4 MR. KILLORY: She was correcting my

05:00:52 5 use of the word "press," quite correctly.

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05:00:56 6 Q. Broke is base web that has broken

05:01:02 7 into pieces; is that correct?

05:01:08 8 MR. MURPHY: Objection to form. You

05:01:10 9 can answer the question if you understand it.

05:01:14 10 A. I would refer to broke as any

05:01:18 11 finished sheet or base web material that's put

05:01:20 12 back in the broke pulp.

05:01:22 13 Q. I see. So it can be either finished

05:01:24 14 sheet or base web?

05:01:26 15 A. That's correct.

05:01:28 16 Q. The broke that's put back in the

05:01:30 17 broke pulp, do you have any understanding as to

05:01:40 18 whether it's more finished sheet or more base

05:01:46 19 web?

05:01:46 20 MR. MURPHY: Objection to form. If

05:01:48 21 you know and understand the question, you can

05:01:50 22 answer it.

05:01:56 23 A. I don't know what the breakdown is.
05:02:00 24 Q. Item number 5 on that same list on
05:02:06 25 page PA 403522 says, "Fiber is being lost through

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05:02:10 2 the cleaning systems and stock prep." Do you
05:02:14 3 know what that refers to?
05:02:18 4 MR. MURPHY: Objection to form. I
05:02:20 5 take it that you're asking her for her knowledge
05:02:22 6 independent of this document.
05:02:24 7 MR. KILLORY: That's right.
05:02:24 8 MR. MURPHY: You can answer the
05:02:26 9 question.
05:02:28 10 A. If someone told me fiber is being
05:02:30 11 lost through the cleaning systems and stock prep,
05:02:32 12 I would take that to mean the fiber being removed
05:02:38 13 by the centrifuges in liquor cleanup and the bird
05:02:44 14 cleaner, being removed in the cleanup.

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05:02:46 15 Q. What are the bird cleaners?
05:02:52 16 A. They are the second stage of liquor
05:02:56 17 cleanup that removes dense, heavy material that's
05:03:00 18 contained in the liquor.
05:03:06 19 MR. KILLORY: One second, so we can
05:03:06 20 wrap up.
05:03:24 21 Could you mark that. We just have a
05:03:24 22 couple of minutes more, David, and we're
05:03:26 23 through.

25 identification, memo on pad stationery of David

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2 Barfield.)

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05:03:58 3 Q. Ms. Donaher, the court reporter has
05:04:00 4 handed you a document that is marked -- I believe
05:04:04 5 it's Exhibit 16, is that correct? Exhibit 16 is
05:04:06 6 Bates stamped PA 614577, production number
05:04:18 7 2031106567, concluding with Bates stamp PA
8 614589, production number 2031106579.
05:04:28 9 On its face the document is a memo on
05:04:30 10 the stationery, the pad stationery of David
05:04:34 11 Barfield, and it outlines the procedure for
05:04:38 12 transferring liquor between lines 1 and 2 tote
05:04:40 13 bin and tanker. It says, "Please review then
05:04:46 14 train your number 2 operators and number 2
05:04:50 15 operator upgrades on how to perform safely and
05:04:52 16 correctly," underlined "safely" and underlined
05:04:54 17 "correctly."
05:04:54 18 "Document who was trained and when
05:05:00 19 and turn in to me by Tuesday morning, 5/29.
05:05:02 20 Don't forget the people from L-3. DLB." It's
05:05:06 21 dated 5/22/90.
05:05:06 22 Attached to it are a series of
05:05:10 23 handwritten, hand lettered pages. Have you ever
05:05:12 24 seen this document before, or any portions of
05:05:14 25 it?

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05:05:14 2 MR. MURPHY: Objection to form. The
05:05:16 3 document speaks for itself, and some of your
05:05:20 4 summary and characterization of it is
05:05:24 5 inaccurate. However, I will let the witness
05:05:30 6 answer the question with respect to whether she's
05:05:32 7 ever seen this document before.

05:05:36 8 A. No, I haven't.

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05:05:38 9 Q. Do you know whether liquor is
05:05:40 10 transferred between lines at the Park 500
05:05:44 11 facility?

05:05:46 12 A. I've heard of instances where it's
05:05:48 13 occurred.

05:05:50 14 Q. What types of instances?

05:05:54 15 A. The ones that I have some knowledge
05:05:58 16 about are when we have had known equipment
05:06:02 17 problems on one line that have prevented us from
05:06:04 18 making liquor or making SCEL or DNCEL to make
05:06:14 19 into size, and so to keep the line from shutting
05:06:18 20 down, then liquor -- if one line had excess
05:06:20 21 liquor or had enough liquor to keep running, a
05:06:22 22 certain amount might be transferred to another
05:06:24 23 line to prevent it from shutting down.

05:06:32 24 Q. So if one line has not enough liquor
05:06:36 25 but another line has enough that it can spare

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05:06:38 2 some, transfers have been made?

05:06:40 3 MR. MURPHY: Objection to form.

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05:06:42 4 Q. Is that correct?

05:06:42 5 MR. MURPHY: That completely

05:06:42 6 misstates and missummarizes her testimony. The

05:06:48 7 testimony speaks for itself. If you have a

05:06:48 8 specific question, put the question to the

05:06:50 9 witness.

05:06:52 10 Q. Other than equipment breakdown, are

05:06:56 11 there any other reasons why there would be low

05:06:58 12 liquor on a given line at Park 500?

05:07:04 13 MR. MURPHY: Objection to form. You

05:07:06 14 can answer the question.

05:07:08 15 A. We could be having process losses, a

05:07:12 16 valve could be open somewhere an operator forgot

05:07:16 17 about or didn't know about. That kind of thing

05:07:24 18 could go undetected for who knows how long.

05:07:30 19 Those are the main instances I can think of.

05:07:30 20 Q. Could low soluble levels in the

05:07:36 21 incoming raw materials be a reason for low liquor

05:07:36 22 inventory on a line?

05:07:38 23 MR. MURPHY: Objection to form. You

05:07:40 24 can answer the question.

05:07:44 25 A. Like I stated earlier, the solubles

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05:07:46 2 level in the feedstock affects the liquor level.

05:07:50 3 So it's a contributing factor.

05:07:50 4 MR. KILLORY: I don't have any other
05:07:52 5 questions at this time, David.

05:07:54 6 MR. MURPHY: Okay. We are adjourned,
05:07:56 7 then.

05:07:58 8 THE VIDEO OPERATOR: We're going off
05:08:02 9 the record. The time on the screen is 5:08:02.

05:08:06 10 This ends the deposition and videotape number 3.

05:08:06 11 MR. MURPHY: I'm sorry, before we go
05:08:08 12 off the record with the reporter, I don't know
05:08:10 13 that we need the video for this, but I'm advised
05:08:12 14 by my Virginia colleague that it's a custom and
05:08:14 15 practice in Virginia to give the same instruction
05:08:16 16 to the witness that Mr. Nunley has given in prior
05:08:20 17 depositions, which is that a transcript will be
05:08:24 18 prepared of this deposition; under the Virginia
05:08:28 19 rules you have a right to review that transcript
05:08:32 20 carefully and to sign it before it becomes the
05:08:34 21 official record of this deposition.

05:08:36 22 You can waive that right. I would
05:08:38 23 advise you that you not waive that right and that
05:08:42 24 you avail yourself of your right to review your
05:08:44 25 deposition transcript and to sign it. Do you

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05:08:46 2 want to do that?

05:08:46 3 THE WITNESS: Yes.

05:08:48 4 MR. KILLORY: Could we just -- I'm
05:08:52 5 sure it's of no consequence. Is there a way we
05:08:54 6 can record the fact that there is something in
05:08:54 7 the transcript that's not on the video?

05:08:58 8 THE VIDEO OPERATOR: The tape is
05:08:58 9 running.

05:09:00 10 MR. KILLORY: That takes care of the
05:09:00 11 problem. There's no problem.

05:09:02 12 THE VIDEO OPERATOR: Now, this ends
05:09:04 13 the videotape. The time on the screen is
05:09:04 14 5:09:09. We're going off the record.

05:11:34 15 (Time noted: 5:09 p.m.)

16

17

18 _____
DENISE R. DONAHER

19

20 Subscribed and sworn to before me
21 this ____ day of _____, 1995.

22

23 _____

24

25

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2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, LEE A. BURSTEN, a Registered
8 Professional Reporter and Notary Public within
9 and for the State of New York, do hereby certify:

10 That DENISE R. DONAHER, the witness
11 whose deposition is hereinbefore set forth, was
12 duly sworn by me and that such deposition is a
13 true record of the testimony given by the
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action by
17 blood or marriage, and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this ____ day of _____, 1995.

21

22

23 _____
LEE A. BURSTEN, R.P.R.

24

25

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1 Donaher - Highly Confidential - Trade Secret
2 (Donaher Exhibit 1 for identification,
3 Nicotine transfer to smoke,
4 investigations of Brazilian cigarettes
5 and a review of some factors affecting

| | | | |
|----|---|-----|----|
| 6 | nicotine transfer to smoke.)..... | 66 | 11 |
| 7 | (Donaher Exhibit 2 for identification, | | |
| 8 | memorandum from S.E. Medak and T.L. | | |
| 9 | Skidmore to Mr. K.S. Burns, dated | | |
| 10 | August 27, 1984.)..... | 81 | 5 |
| 11 | (Donaher Exhibit 3 for identification, | | |
| 12 | ART stems.)..... | 142 | 12 |
| 13 | (Donaher Exhibit 4 for identification, | | |
| 14 | test request form.)..... | 146 | 25 |
| 15 | (Donaher Exhibit 5 for identification, | | |
| 16 | test request form with pages attached.).. | 151 | 7 |
| 17 | (Donaher Exhibit 6 for identification, | | |
| 18 | request form dated 3/16/92.)..... | 177 | 9 |
| 19 | (Donaher Exhibit 7 for identification, | | |
| 20 | Park 500 RL processing lab shift | | |
| 21 | technician T-3 training manual, first | | |
| 22 | edition 1994.)..... | 186 | 18 |
| 23 | (Donaher Exhibit 8 for identification, | | |
| 24 | The Paper Making Process Language, Park | | |
| 25 | 500 division of Philip Morris.)..... | 189 | 10 |

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|---|--|-----|----|
| 1 | Donaher - Highly Confidential - Trade Secret | | |
| 2 | (Donaher Exhibit 9 for identification, | | |
| 3 | C&I closeout report.)..... | 193 | 23 |
| 4 | (Donaher Exhibit 10 for identification, | | |
| 5 | Broke refeed chart.)..... | 199 | 9 |
| 6 | (Donaher Exhibit 11 for identification, | | |
| 7 | Park 500 Inter-office correspondence | | |

8 from D. Barfield, T. Bullock, B. Estes,
 9 C. Spellmeyer.)..... 206 23
 10 (Donaher Exhibit 12 for identification,
 11 Q 500 Park 500 section 6, the line 1/2
 12 SPC system.)..... 217 24
 13 (Donaher Exhibit 13 for identification,
 14 Test request form, production quality
 15 and technical services.)..... 222 11
 16 (Donaher Exhibit 14 for identification,
 17 test request form dated August 12, 1993
 18 .)..... 223 19
 19 (Donaher Exhibit 15 for identification,
 20 document Bates stamped PA 403521
 21 through PA 403527.)..... 230 8
 22 (Donaher Exhibit 16 for identification,
 23 memo on pad stationery of David
 24 Barfield.)..... 236 23
 25

03:58:28 5 MANHATTAN REPORTING CORP.
 Q. As opposed to lay definitions of
 03:58:30 6 liquor and juice. You can put that aside.
 03:58:44 7 What was your work on the -- what did
 03:58:48 8 your work on the centrifuge sludge problem
 03:58:52 9 entail?
 03:58:52 10 MR. MURPHY: Objection to form. I
 03:58:56 11 think the question involves a characterization
 03:58:58 12 that may be without foundation. You can answer
 03:59:06 13 the question or Mr. Killory can rephrase it.
 03:59:08 14 Q. Do you understand the question?
 03:59:08 15 A. Are you asking what my objective was,
 03:59:12 16 the purpose?

03:59:12 17 Q. Yes.

03:59:14 18 A. The purpose was to look at taking the

03:59:24 19 fibers from the centrifuge sludge or centrifuge

03:59:28 20 sludge themselves and incorporating it back into

03:59:30 21 the process as fiber as opposed to disposing of

03:59:36 22 it.

03:59:36 23 Q. At the time you were given the

03:59:40 24 assignment, the centrifuge sludge was disposed

03:59:42 25 of?

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03:59:44 2 MR. MURPHY: Do we have a time yet?

03:59:44 3 MR. KILLORY: Mm-mm.

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03:59:46 4 Q. What was the existing process at the

03:59:50 5 time you were given the assignment?

03:59:50 6 MR. MURPHY: Well, let's put a date

03:59:52 7 on this, because right now it's very unclear as

03:59:54 8 to what we're talking about.

03:59:56 9 MR. KILLORY: We'll get the date. I

03:59:58 10 just have a question --

03:59:58 11 MR. MURPHY: We don't even know if

04:00:00 12 this is prior to March 24, 1994. So let's

04:00:02 13 establish a date and do this in an orderly

04:00:06 14 fashion.

04:00:06 15 Q. Do you recall whether it was prior to

04:00:08 16 March of 1994 that you were given the centrifuge

04:00:12 17 sludge assignment?

04:00:14 18 A. I believe it was, but I'm --
04:00:16 19 Q. Do you -- I'm sorry. Do you remember
04:00:18 20 when, what the date was of the assignment?
04:00:20 21 A. No, I don't.
04:00:22 22 Q. At the time you were given the
04:00:24 23 assignment, was centrifuge sludge disposed of?
04:00:36 24 A. Yes, it was.
04:00:40 25 Q. What is centrifuge sludge?

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04:00:48 2 A. It's material from the tobacco
04:00:56 3 that's -- from the tobacco liquor that's
04:01:02 4 centrifuged out in the last stage of liquor
04:01:02 5 cleanup.
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04:01:06 6 Q. Is this material from the liquor
04:01:08 7 cleanup fiber?
04:01:14 8 A. The majority of it is fiber.
04:01:22 9 Q. And this is generated from the liquor
04:01:22 10 cleanup, not the denitration centrifuge; is that
11 correct?
04:01:28 12 MR. MURPHY: Objection to form. You
04:01:28 13 can answer.
04:01:30 14 A. Can you say the question -- it
04:01:32 15 doesn't make sense.
04:01:32 16 Q. I understand there's a denitration
04:01:36 17 centrifuge as well. Do you have any knowledge as
04:01:38 18 to that?
04:01:40 19 A. Yes, there is.

04:01:42 20 Q. And the centrifuge sludge we're
04:01:46 21 talking about here is generated from the liquor
04:01:48 22 cleanup centrifuge; is that correct?
04:01:50 23 A. Yes, it is.
24 (Donaher Exhibit 9 for
25 identification, C&I closeout report.)

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04:02:40 2 Q. Ms. Donaher, I don't have detailed
04:02:42 3 questions on Exhibit 9. It appears to be a --
04:02:44 4 it's labeled "C&I closeout report." "Problem,
04:02:48 5 centrifuge sludge is removed from the RL process
04:02:52 6 resulting in disposal cost and yield loss. Start
04:02:56 7 date, November 2, 1992. Solutions and date
04:02:58 8 implemented, this decision was made to
04:03:00 9 discontinue this project in November 1993. The
04:03:04 10 closeout date, November 1993."

04:03:06 11 MR. MURPHY: Just for the record,
04:03:06 12 this appears to be a number of different
04:03:10 13 documents. I don't know how this was produced.
04:03:14 14 I'm not making any representation that it was not
04:03:16 15 produced --

04:03:18 16 MR. GOLDBLATT: It was produced in
04:03:22 17 this matter. It says, "I am attaching memoranda
04:03:22 18 relating to this project."

04:03:24 19 MR. KILLORY: That reminds me, I
04:03:24 20 should be giving the Bates stamp number for

04:03:34 21 this. It's PA 315999. It runs through PA
22 316017. The production numbers are 2025323903
04:03:54 23 through 2025323921. As Mr. Goldblatt indicated,
04:03:54 24 this was in the form as it was produced to Philip
04:03:56 25 Morris.

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04:03:58 2 Q. Do you recognize this closeout
04:04:00 3 report?
04:04:00 4 A. Yes, I do.
04:04:02 5 Q. And what is it?
04:04:02 6 A. It's a standard report that was
04:04:06 7 filled out at the end of this project by me.
04:04:10 8 Q. You prepared this report?
04:04:12 9 A. Yes.
04:04:12 10 Q. What does C&I stand for?
04:04:16 11 A. It stands for control and
04:04:16 12 improvement.
04:04:20 13 Q. What conclusion does this reflect
04:04:22 14 with regard to the centrifuge sludge project that
04:04:26 15 you worked on?
04:04:32 16 A. It states that that the project was
04:04:34 17 discontinued.
04:04:38 18 Q. So that you discontinued the effort
04:04:44 19 to find a means to recirculate the fibrous
04:04:46 20 materials from the centrifuge sludge in the RL
04:04:48 21 process?
04:04:50 22 MR. MURPHY: Objection to form. You

04:04:52 23 can answer.

04:04:54 24 A. It means we discontinued any efforts

04:05:00 25 to reincorporate centrifuge sludge in the RL

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04:05:04 2 process.

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04:05:06 3 Q. So centrifuge sludge continued to be

04:05:08 4 disposed of as you described it being done

04:05:10 5 earlier?

04:05:10 6 A. That's correct.

04:05:12 7 Q. Do you know what the quantity of

04:05:14 8 centrifuge sludge generated in a day's operation

04:05:20 9 of the RL process is?

04:05:22 10 A. I don't know, no. Not exactly.

04:05:30 11 Q. Do you have any idea -- as a

04:05:32 12 percentage of the raw materials coming through

04:05:34 13 the line, do you know what percentage the

04:05:38 14 centrifuge sludge would represent?

04:05:44 15 A. 1 to 2 percent. But that's just an

04:05:46 16 approximation.

04:05:50 17 Q. I don't have any other questions on

04:05:52 18 that document. You mentioned earlier that you

04:05:56 19 worked on a padding problem project; is that

04:06:02 20 correct?

04:06:02 21 A. Yes, I do.

04:06:06 22 Q. What was your assignment in

04:06:08 23 connection with the padding problem?

04:06:10 24 A. My assignment was to lead an effort
04:06:14 25 to determine some means of eliminating problems

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04:06:18 2 with RL pads.

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04:06:26 3 Q. What are RL pads?

04:06:28 4 A. Pads are a major problem to our
04:06:32 5 customers in the primaries. They're caused -- or
04:06:38 6 they are blobs of pieces of RL stuck together to
04:06:44 7 form a big, hard clump of varying size and
04:06:46 8 thickness.

04:06:48 9 Q. And when you say "customers" in your
04:06:50 10 prior response, to whom are you referring?

04:06:52 11 A. I'm talking about customers in the
04:06:54 12 primaries that receive our product.

04:06:56 13 Q. That's the Philip Morris facilities
04:06:58 14 to whom you send the RL product, finished
04:07:00 15 product?

04:07:00 16 A. That's correct.

04:07:04 17 Q. What are the causes of RL padding?

04:07:10 18 A. The causes we identified as a
04:07:14 19 result -- during the course of this work were the
04:07:22 20 OV level of the product going into the container,
04:07:26 21 the solubles level, and the uniformity of the RL
04:07:30 22 in the container itself.

04:07:32 23 Q. By "the OV level," does that refer to
04:07:36 24 oven volatiles?

04:07:38 25 A. Yes, it does.

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04:07:38 2 Q. And the solubles, would it be high

04:07:42 3 soluble content that would result in padding?

04:07:44 4 MR. MURPHY: Objection to form. You

04:07:46 5 can answer the question.

04:07:50 6 A. There was an interaction between

04:07:56 7 solubles and moisture. When you had high

04:08:00 8 moisture and higher solubles, you had more pads.

04:08:04 9 Q. Did you ever arrive at a solution to

04:08:06 10 the problem?

04:08:08 11 A. Yes, we did.

04:08:10 12 Q. And what was that solution?

04:08:10 13 MR. MURPHY: Just to be clear, when

04:08:14 14 you say "you," are you using "you" as in Philip

04:08:18 15 Morris or "you" as in Denise Donaher?

04:08:20 16 Q. You as a leader of the team designing

04:08:24 17 the task of coming up with the solution to the

04:08:28 18 problem. Did the team arrive at a solution to

04:08:30 19 the padding problem?

04:08:32 20 MR. MURPHY: Objection to the form.

04:08:32 21 You can answer the question.

04:08:32 22 A. Yes, we did.

04:08:34 23 Q. And what was that solution?

04:08:36 24 A. The solution was an improved means of

04:08:42 25 distributing the RL product inside the container.

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04:08:46 2 Q. And what was that improved means of

04:08:48 3 distributing?

04:09:00 4 A. We used a series of conveyors with

04:09:02 5 variable speeds that layered the tobacco --

04:09:06 6 layered the RL into the container, in the hog's

04:09:10 7 head.

04:09:12 8 MR. KILLORY: Could you mark that as

04:09:16 9 Exhibit 10.

10 (Donaher Exhibit 10 for

11 identification, Broke refeed chart.)

04:09:42 12 Q. Ms. Donaher, the court reporter has

04:09:44 13 marked as Exhibit 10 a one-page document produced

04:09:48 14 by Philip Morris with the Bates stamp number PA

04:09:54 15 539595, the production number 2030054866. It is

04:10:02 16 titled "Broke refeed chart." The bottom of the

04:10:02 17 page says, "Pad team, July 8, 1993."

04:10:10 18 Do you recognize this document?

04:10:18 19 A. I may have seen it.

04:10:18 20 Q. Do you know whether you would have

04:10:20 21 seen it in the context of working on the pad

04:10:24 22 problem project that we were just discussing?

04:10:26 23 MR. MURPHY: Objection to form. You

04:10:28 24 can answer.

04:10:40 25 A. It's likely.

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04:10:40 2 Q. What is broke?

04:10:46 3 A. Broke in the context of this document

04:10:48 4 or broke --

04:10:50 5 Q. Broke in the context of this

04:10:52 6 document. What's being referred to here?

04:10:56 7 MR. MURPHY: Objection to form. You

04:10:58 8 can answer.

04:11:06 9 A. I'm having to refresh my memory on

04:11:08 10 what this document is.

04:11:10 11 Q. I understand.

04:11:38 12 A. It's not clear to me in this case

04:11:38 13 what exactly broke is. But generally it would

04:11:42 14 refer to pounds of product, of RL product or

04:11:48 15 pads. This may have been a result of a pad

04:11:48 16 testing that was put back in the broke pulp. I

04:11:54 17 don't know if it was product that was produced

04:11:54 18 during these tests or the pads themselves, or

04:11:58 19 both.

04:12:02 20 Q. Pads, when you refer to pads in that

04:12:04 21 context, it would be pads produced by the testing

04:12:06 22 as well?

04:12:08 23 MR. MURPHY: Objection to form. If

04:12:10 24 you understand the question, you can answer it.

04:12:14 25 Q. Let me ask a different question. I

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1 Donaher - Highly Confidential - Trade Secret

04:12:14 2 think that was imprecise. When your customers
04:12:20 3 would receive pads in the RL product, would they
04:12:26 4 send it back to you, the pads?

04:12:28 5 A. Are we talking about this -- in the
04:12:30 6 context of this document? Are we talking about
04:12:32 7 generally speaking?

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04:12:34 8 Q. First start, generally speaking.
04:12:36 9 We'll come back to the document.

04:12:36 10 A. Generally speaking, yes, the pads
04:12:40 11 that our customers have left over after
04:12:44 12 processing are returned to Park 500.

04:12:50 13 Q. What is done with the pads that are
04:12:50 14 returned from Park 500's customers?

04:12:52 15 A. They're fed into the broke pulper.

04:12:58 16 Q. And from the broke pulper they go
04:12:58 17 where?

04:13:02 18 A. The broke pulper ends back in the
04:13:04 19 blend pulper.

04:13:06 20 Q. Which is back at the start of the RL
04:13:08 21 process?

04:13:08 22 A. That's correct.

04:13:08 23 Q. Back to this specific document, I was
04:13:12 24 trying to understand, when you said the broke
04:13:16 25 referred to here could be the product of the

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1 Donaher - Highly Confidential - Trade Secret

04:13:20 2 testing or it could be the pads themselves -- is
3 that correct?

04:13:24 4 A. That's what I said, yes.

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04:13:24 5 Q. What did you mean by "the pads
04:13:26 6 themselves"?

04:13:28 7 A. Based on the left-hand column where
04:13:30 8 it says "Trial number," that leads me to believe
04:13:36 9 that these numbers were generated during our
04:13:38 10 trial period when we were trying to determine the
04:13:48 11 causes of pads. And we pad tested the product,
04:13:50 12 trial hogs' heads, at Semi-Works to find out the
04:13:54 13 quantity of pads inside each of these trials.

04:13:58 14 Q. In the testing that you did in the
04:14:04 15 course of the pad project, did you test for
04:14:06 16 soluble content of the pads?

04:14:08 17 A. Of the pads themselves? No.

04:14:10 18 Q. Are the pads something distinct from
04:14:10 19 the RL?

04:14:14 20 MR. MURPHY: Objection to form. You
04:14:18 21 can answer, if you understand the question.

04:14:20 22 A. My understanding is, pads are RL.

04:14:22 23 Q. It's RL stuck together.

04:14:24 24 A. That's correct.

04:14:26 25 Q. And your recollection is you did not

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1 Donaher - Highly Confidential - Trade Secret

04:14:30 2 test for the soluble content of that RL that was
04:14:34 3 stuck together in pads in the course of your pad

04:14:36 4 team project?

04:14:38 5 A. We didn't, no.

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04:15:00 6 Q. Is there a lab that's part of the

04:15:02 7 Park 500 operation?

04:15:06 8 A. Yes.

04:15:10 9 Q. Do you work in the lab?

04:15:10 10 A. No, I don't.

04:15:12 11 Q. Have you at any time in your time at

04:15:14 12 Park 500?

04:15:18 13 A. I have never been in the lab

04:15:20 14 department, no.

04:15:26 15 Q. Do you understand what the lab

04:15:28 16 department does?

04:15:30 17 A. I have general knowledge of some of

04:15:32 18 their responsibilities.

04:15:32 19 Q. And what is that?

04:15:36 20 A. To provide process results to the

04:15:44 21 manufacturing operation.

04:16:04 22 Q. Is there a target level for the size

04:16:06 23 to be -- for the amount of size to be applied to

04:16:08 24 the base web in the RL production process?

04:16:12 25 MR. MURPHY: Objection to form. You

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1 Donaher - Highly Confidential - Trade Secret

04:16:16 2 can answer the question.

04:16:22 3 A. There's not a target level for the

04:16:26 4 amount of size that's added to the base web, no.

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04:16:32 5 Q. How is it determined how much size to
04:16:32 6 add to the base web in the production process?
04:16:38 7 MR. MURPHY: Objection to form. I
04:16:44 8 think the question is still unclear. But if you
04:16:44 9 understand the question, you can answer it.
04:16:50 10 A. Can you repeat the question again?
04:16:54 11 Q. Sure. In the production of RL, how
04:17:00 12 do you know how much size to add to the base web
04:17:02 13 to produce the finished product?
04:17:04 14 MR. MURPHY: Objection to form. You
04:17:06 15 can answer.
04:17:08 16 A. The amount of size is determined by
04:17:14 17 the finished sheet solubles specifications.
04:17:20 18 Q. And what are those specifications?
04:17:22 19 A. I don't know exactly what they are.
04:17:24 20 Q. Do you know generally what those
04:17:26 21 specifications are?
04:17:28 22 A. Approximately 43 percent to 48
04:17:32 23 percent finished sheet solubles.
04:17:38 24 Q. And by that you mean that 43 to 48
04:17:42 25 percent of the finished sheet consists of

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1 Donaher - Highly Confidential - Trade Secret
04:17:46 2 solubles?
04:17:46 3 A. That's correct. That's
04:17:50 4 approximately.

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04:17:52 5 Q. That's the target level?

04:17:56 6 MR. MURPHY: Objection to form. I
04:17:58 7 don't want this to be unclear. That's solubles
04:18:02 8 by weight, by total weight.
04:18:04 9 Q. Is that what you meant, by weight?
04:18:04 10 A. Yes, it is. I think --
04:18:10 11 Q. Does -- go ahead.
04:18:10 12 A. I think you said that was the target
04:18:12 13 level. I think I said it was the specification.
04:18:18 14 Q. What's the difference between
04:18:18 15 specification and target level?
04:18:22 16 A. The specification is the range of
04:18:28 17 finished sheet solubles that would be considered
04:18:32 18 acceptable to ship the product. Acceptable
04:18:38 19 finished product. The target level is the
04:18:48 20 percent finished sheet solubles that are being
04:18:48 21 targeted at a given point in time.
04:18:54 22 Q. Is the target level always within the
04:19:00 23 specifications?
04:19:00 24 A. Yes, it is.
04:19:02 25 Q. The specifications set the upper and

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1 Donaher - Highly Confidential - Trade Secret
04:19:06 2 lower limit for the acceptable target?
04:19:08 3 MR. MURPHY: Objection to form. You
4 can answer.
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04:19:10 5 Q. Is that correct?
04:19:16 6 A. The targets would be -- the target
04:19:20 7 limits would be approximately the same as the

04:19:24 8 specification limits, yes.

04:19:32 9 Q. In your time at Park 500, have the

04:19:34 10 specification limits changed?

04:19:36 11 A. Not to my knowledge.

04:19:40 12 Q. How about the target level? Has that

04:19:42 13 changed?

04:19:46 14 A. There isn't one target level.

04:19:46 15 MR. MURPHY: Objection to form. You

04:19:48 16 can answer.

04:19:48 17 A. There isn't one target level.

04:19:52 18 Q. How is the target level determined?

04:20:00 19 A. The target level is determined by the

04:20:02 20 amount of liquor that's available to put back on

04:20:06 21 the base web.

04:20:12 22 MR. KILLORY: Would you mark that,

04:20:14 23 please.

24 (Donaher Exhibit 11 for

25 identification, Park 500 Inter-office

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1 Donaher - Highly Confidential - Trade Secret

2 correspondence from D. Barfield, T. Bullock, B.

3 Estes, C. Spellmeyer.)

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04:20:46 4 Q. What factors would affect the level,

04:20:46 5 the amount of liquor that's available to put back

04:20:50 6 on the base web?

04:20:54 7 MR. MURPHY: Objection to form. You

04:20:56 8 can answer.

04:21:10 9 A. Losses of solubles in the process.
04:21:12 10 Equipment problems, difficulties. Down time in
04:21:18 11 the liquor processing side, or variation of
04:21:18 12 solubles levels in the incoming feedstocks.
04:21:24 13 Q. So if there were low soluble levels
04:21:28 14 in the incoming feedstocks, that could lead to a
04:21:32 15 lower amount of liquor in inventory at any given
04:21:34 16 time; is that correct?
04:21:36 17 A. That's one of the things that
04:21:38 18 contributes.
04:21:42 19 Q. What happens if the soluble levels of
04:21:44 20 the incoming raw materials are higher than
04:21:50 21 usual?
04:21:50 22 MR. MURPHY: Objection to form. The
04:21:52 23 question is somewhat vague. But you can answer,
04:21:54 24 if you understand it.
04:21:56 25 A. I don't know what you mean, "higher

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1 Donaher - Highly Confidential - Trade Secret
04:21:58 2 than usual."
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04:21:58 3 Q. You mentioned lower soluble levels in
04:22:00 4 the incoming materials, the raw materials could
04:22:04 5 be one of the reasons for low liquor inventory.
04:22:10 6 My question is simply, are there situations where
04:22:14 7 high soluble levels on the incoming feedstock or
04:22:18 8 raw materials leads to high inventory levels of
04:22:22 9 liquor?
04:22:22 10 MR. MURPHY: Objection to form. Her

04:22:26 11 testimony speaks for itself. I move to strike
04:22:28 12 that portion of your question. You can answer
04:22:30 13 the remainder of the question.
04:22:34 14 A. The solubles level in the feedstocks
04:22:36 15 varies from low to high, and everywhere in
04:22:40 16 between.
04:22:42 17 Q. What's the range of variation, do you
04:22:42 18 know?
04:22:44 19 A. Approximately 40 -- 45 to 50.
04:23:02 20 Q. What's the basis for your knowledge
04:23:04 21 as to the range of soluble levels of incoming raw
04:23:08 22 materials?
04:23:14 23 A. We have a TQM, total quality measure,
04:23:20 24 of hot water solubles of feedstocks.
04:23:32 25 Q. Are there times where it's necessary

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1 Donaher - Highly Confidential - Trade Secret
04:23:34 2 to dispose of base web?
04:23:38 3 MR. MURPHY: Objection to form. You
04:23:40 4 can answer the question.
04:23:42 5 A. The only time I'm aware of disposing
04:23:44 6 of base web for any reason is possibly at startup
04:23:50 7 or shutdown situations.
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04:23:54 8 Q. So you're not aware, other than
04:23:56 9 startup and shutdowns, you're not aware of other
04:24:00 10 times where base web would be disposed of?
04:24:02 11 A. Not that I'm aware of, no, but I'm

04:24:02 12 not in the day-to-day operation.

04:24:04 13 Q. Would disposal of the base web affect

04:24:08 14 the amount of inventory of liquor available for

04:24:12 15 application to the base web?

04:24:14 16 MR. MURPHY: Objection to form. I

04:24:20 17 don't think the question makes sense, Ted.

04:24:20 18 A. It doesn't make sense to me.

04:24:22 19 Q. How is liquor -- from where is the

04:24:26 20 liquor produced in the RL process?

04:24:30 21 A. It's produced from the solubles in

04:24:30 22 the feedstocks.

04:24:32 23 Q. From the raw materials. And after

04:24:34 24 the liquor is extracted, the remainder of that

04:24:38 25 feedstock is the base web; is that correct?

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1 Donaher - Highly Confidential - Trade Secret

04:24:40 2 MR. MURPHY: Objection to form. You

04:24:44 3 can answer the question if you understand it.

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04:24:52 4 Q. Do you understand the question?

04:24:54 5 A. Could you repeat it?

04:24:58 6 Q. The liquor is extracted; is that

7 correct?

04:24:58 8 A. The liquor is extracted --

04:25:00 9 Q. From the raw materials.

04:25:02 10 A. That's correct.

04:25:04 11 Q. What is left in the raw materials

04:25:08 12 after the liquor is extracted?

04:25:12 13 MR. MURPHY: Objection to form. I

04:25:14 14 think we're just tripping over words here, and I
04:25:18 15 don't think you're being deliberately misleading
04:25:20 16 or vague.

04:25:22 17 MR. KILLORY: Why don't I try to
04:25:22 18 reword it.

04:25:24 19 MR. MURPHY: The liquor extracted is
04:25:28 20 I think part of what's confusing the witness, and
04:25:30 21 it's certainly confusing me.

04:25:32 22 MR. KILLORY: Let me rephrase it just
04:25:32 23 for purposes of a clear record.

04:25:34 24 Q. The RL process, and I realize this is
04:25:40 25 somewhat of an oversimplification, but in

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1 Donaher - Highly Confidential - Trade Secret
04:25:40 2 overview, the RL process involves separating the
04:25:48 3 solubles, which you've referred to as the liquor,
04:25:50 4 from the raw materials; is that correct?

04:25:54 5 MR. MURPHY: Objection to form. The
04:25:58 6 solubles are part of the raw materials. With
04:25:58 7 that clarification, if you understand the
04:26:00 8 question.

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04:26:00 9 Q. Do you have an understanding as to
04:26:02 10 whether solubles are separated from the base web
04:26:04 11 in the RL process?

04:26:06 12 A. They're removed or separated.

04:26:10 13 Q. And the base web continues through
04:26:16 14 the process, and the liquor that's been separated

04:26:18 15 continues through the process; is that correct?
04:26:22 16 MR. MURPHY: Objection to form. I
04:26:24 17 think the problem here, Ted, is, and we can ask
04:26:30 18 the witness to leave the room if you want for a
04:26:32 19 moment, and I can explain the terminological
04:26:32 20 problem I have with your question if you prefer
04:26:36 21 to do that. I'm willing to do that.
04:26:38 22 MR. KILLORY: I'll try to reword it
04:26:40 23 again.
04:26:42 24 MR. MURPHY: Okay.
04:26:42 25 Q. If you take a batch of materials on

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1 Donaher - Highly Confidential - Trade Secret
04:26:46 2 line 1 that's coming into the process, in the
04:26:52 3 course of the RL production process, that batch
04:27:00 4 of material is -- choose your word. Separated,
04:27:02 5 is "separated" not the right word for what
04:27:04 6 happens to the solubles versus the base web?
04:27:04 7 MR. MURPHY: Objection to form. You
04:27:06 8 can answer.
04:27:10 9 A. You could say separated or removed.
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04:27:12 10 Q. Okay. Let's say removed.
04:27:12 11 MR. MURPHY: What is separated or
04:27:14 12 removed?
04:27:16 13 MR. KILLORY: The base web, the
04:27:18 14 liquor is -- the solubles are separated from the
04:27:20 15 base web.
04:27:22 16 Q. Correct?

04:27:24 17 MR. MURPHY: Objection to form. I
04:27:26 18 think there's a very simple way to cut through
04:27:28 19 this, if you'll let me.
04:27:30 20 I would like to just tell you that
04:27:34 21 the word "base web" is being misused in your
04:27:40 22 question. Solubles are separated from tobacco
04:27:42 23 materials or fiber, and the resulting fibrous
04:27:46 24 material is known as base web. But I think it's
04:27:52 25 a misdescription to -- I think it's a

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1 Donaher - Highly Confidential - Trade Secret
04:27:54 2 misdescription to say that the solubles are being
04:27:56 3 separated from base web.
04:27:58 4 You can say they're being separated
04:27:58 5 from stock, from feedstock from the raw
04:28:02 6 materials, or from the tobacco, whichever
04:28:06 7 terminology you prefer. But I just want to keep
04:28:08 8 the record clear as to a term of art here that is
04:28:10 9 used in the process.
04:28:12 10 With that clarification, why don't
04:28:14 11 you ask another question.

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04:28:16 12 Q. Solubles, and the base web, have
04:28:20 13 their origins in the raw materials; is that
04:28:24 14 correct? Both come from the raw materials
04:28:26 15 originally.

04:28:28 16 A. Yes, that's correct.

04:28:28 17 MR. MURPHY: It's become

04:28:30 18 metaphysical.

04:28:32 19 Q. So you've now -- I realize there may

04:28:34 20 be other stray pieces, but let's just focus on

04:28:36 21 the solubles component and the base web

04:28:40 22 component. Okay? Do you have that in mind?

04:28:44 23 A. I have it in mind.

04:28:44 24 Q. If you run the base web because of

04:28:50 25 startup or shutdown reasons, or any other reason,

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1 Donaher - Highly Confidential - Trade Secret

04:28:52 2 if the base web is run, aren't you then left with

04:28:56 3 a higher level of solubles in inventory?

04:29:00 4 MR. MURPHY: Objection to form. I

04:29:04 5 still think that the question doesn't make sense.

04:29:06 6 MR. KILLORY: Let's let her try to

04:29:12 7 answer this one.

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04:29:12 8 Q. Do you understand this question?

04:29:26 9 MR. MURPHY: Ted, could you repeat

04:29:28 10 the question for the witness?

04:29:30 11 Q. If you run the base web because of

04:29:32 12 startup or shutdown reasons or any other reason,

04:29:36 13 if the base web is run, aren't you then left with

04:29:38 14 a higher level of solubles in inventory?

04:29:40 15 MR. MURPHY: Same objection. You can

04:29:42 16 answer.

04:29:44 17 A. If you did that, yes, provided you

04:29:48 18 had liquor and you were still running the rest of

04:29:52 19 the process, yes. But that's making a big

04:30:00 20 assumption that you're running the risk of the
04:30:02 21 process.
04:30:04 22 Q. Are there times when base web is run
04:30:04 23 that the rest of the process continues?
04:30:08 24 MR. MURPHY: Objection to form. You
04:30:08 25 can answer.

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1 Donaher - Highly Confidential - Trade Secret
04:30:16 2 A. If we're in a shutdown mode, it's
04:30:20 3 possible that we're running out of the stock
04:30:22 4 chest and running base web, when the rest of the
04:30:32 5 process has already been cleared out.
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04:30:40 6 Q. Could you take a look at Exhibit
04:30:44 7 Number 11, the one-page document. Bates stamp PA
04:30:54 8 592805, production number 2031263050. Have you
04:31:00 9 had a chance to look at it?
04:31:02 10 A. I'm familiar with the document.
04:31:06 11 Q. Have you seen the document before?
04:31:08 12 A. Yes, I have.
04:31:10 13 Q. In what context have you seen it?
04:31:14 14 A. In the course of familiarizing myself
04:31:16 15 with some of the procedures or processes within
04:31:22 16 the RL process, I came across this document on
04:31:24 17 the floor.
04:31:28 18 Q. It's entitled -- the subject line
04:31:28 19 says, "Procedure for finished products solubles
04:31:32 20 center line adjustment." What is the center line

04:31:36 21 being referred to here?
04:31:38 22 A. I would call it the target.
04:31:46 23 Q. And when it refers to FS, is that
04:31:48 24 finished sheet?
04:31:50 25 A. I believe so.

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1 Donaher - Highly Confidential - Trade Secret

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04:31:52 2 Q. So this is a discussion of the
04:32:00 3 procedures to follow -- let me strike that.
04:32:02 4 When you say "target" in your last
04:32:04 5 response, you mean target in the sense we
04:32:06 6 described in your preceding testimony about five
04:32:08 7 minutes ago?
04:32:10 8 MR. MURPHY: Objection to form. You
04:32:10 9 can answer.
04:32:14 10 A. Yes. "Target" refers to what
04:32:16 11 finished sheet solubles level that is being
04:32:20 12 targeted at that point in time.
04:32:28 13 Q. And how could you achieve the changes
04:32:32 14 in that target or center line level, how
04:32:34 15 physically could that be achieved?
04:32:36 16 MR. MURPHY: I object to the form.
04:32:38 17 You can answer.
04:32:44 18 A. Can you try and rephrase that
04:32:46 19 question?
04:32:50 20 Q. How do you change the soluble target
04:33:10 21 level for the finished sheet? How do you effect
04:33:16 22 that change?

04:33:16 23 MR. MURPHY: Objection to form. I
04:33:20 24 would also like a clarification as to your use of
04:33:20 25 the word "you."

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1 Donaher - Highly Confidential - Trade Secret

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04:33:22 2 Q. I'm sorry, that's unclear. In the
04:33:24 3 Park 500 operations producing RL, how are changes
04:33:28 4 in the target level for the finished sheet
04:33:30 5 effected?

04:33:32 6 A. Not being in operations, I'm not
04:33:44 7 aware of all the methods. Some of the ones I'm
04:33:44 8 aware of are changing the solubles level in the
04:33:54 9 size prep batches, or changing the -- I guess
04:34:00 10 it's pressure on the size press roll.

04:34:02 11 Q. When you say changing the pressure on
04:34:02 12 the size press roll, what do you mean?

04:34:08 13 A. The size is applied to the base web
04:34:16 14 through a size press, which is comprised of a
04:34:18 15 couple of rolls, and by changing the pressure,
04:34:24 16 that's the best way I can describe it, then you
04:34:26 17 could be affecting the amount of solubles that
04:34:32 18 are put onto the finished sheet.

04:34:32 19 Q. Changing the pressure would result in
04:34:36 20 a change in the amount of solubles applied to the
04:34:40 21 finished sheet?

04:34:42 22 A. I believe so. But I don't know what
04:34:46 23 that relationship is.

04:34:50 24

MR. KILLORY: Would you mark that.

25

(Donaher Exhibit 12 for

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1 Donaher - Highly Confidential - Trade Secret
2 identification, Q 500 Park 500 section 6, the
3 line 1/2 SPC system.)

04:34:56 4 MR. MURPHY: Ted, I'm a little late
04:34:58 5 with this objection, but I'll make it just for
04:35:00 6 clarity. Solubles are not actually what's being
04:35:02 7 applied to the finished sheet.

04:35:04 8 MR. KILLORY: The size.

04:35:06 9 MR. MURPHY: That's actually not my
04:35:06 10 point. The solubles are being applied to base
04:35:08 11 web resulting in finished sheet.

04:35:12 12 MR. KILLORY: Okay.

04:35:12 13 MR. MURPHY: We're none of us
04:35:14 14 engineers, but some of these terms may matter in
04:35:16 15 terms of clarity. So I like to make them clear.

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04:35:48 16 Q. Ms. Donaher, when we've been
04:35:52 17 discussing solubles applied to the finished
04:35:54 18 sheet, at that stage of the production, do the
04:35:58 19 solubles include additives?

04:36:00 20 MR. MURPHY: Objection to form. If
04:36:04 21 you understand the question and its terminology,
04:36:06 22 you can answer.

04:36:10 23 A. What additives are you referring to,
04:36:12 24 or are you not referring to additives?

04:36:14 25 Q. Flavors, for example.

1 Donaher - Highly Confidential - Trade Secret

04:36:16 2 A. Yes, they do include flavors.

04:36:18 3 MR. MURPHY: This has the same

04:36:18 4 defect, Ted we just discussed, solubles being

04:36:22 5 applied to finished sheet. Just to keep the

04:36:26 6 record clear, that's not what happens in the

04:36:26 7 process.

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04:36:32 8 Q. Could you just look at the cover of

04:36:38 9 Exhibit Number 12 that has just been handed to

04:36:38 10 you by the court reporter. It's Bates stamped PA

04:36:50 11 267301, production number 2030049035. The last

04:36:52 12 page of this rather long document is Bates

04:37:02 13 stamped PA 267376, production number 2030049110.

04:37:04 14 Have you seen -- the document is

04:37:10 15 entitled, Q 500 Park 500 section 6, the line 1/2

04:37:14 16 SPC system. Do you recognize this document?

04:37:30 17 A. I have a pretty good idea where it

04:37:32 18 came from.

04:37:32 19 Q. And where is that?

04:37:34 20 A. From a Q-1 manual.

04:37:36 21 Q. I'm sorry.

04:37:36 22 A. Q-1 manual.

04:37:38 23 Q. What is a Q-1 manual?

04:37:48 24 A. It's one of our training manuals that

04:37:48 25 is used to train employees about the development,

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04:37:54 2 the line 1, 2 SPC system, and the process by

04:37:56 3 which it was developed.

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04:38:00 4 Q. If you could turn to the page very

04:38:04 5 near the end, it's bearing the Bates stamp PA

04:38:12 6 267354, and the production number 2030049088.

04:38:18 7 MR. MURPHY: Having not had a chance

04:38:20 8 to read the whole document, Ted, do you know

04:38:24 9 whether there is any date on this document?

04:38:24 10 MR. KILLORY: I do not believe there

04:38:28 11 is. I won't swear to it, but from my review of

04:38:32 12 it, I believe there's not. There may be

04:38:34 13 something in there that indicates a date, but it

04:38:36 14 is not formally dated.

04:38:38 15 Q. Have you got the page in front of you

04:38:40 16 that I referred to?

04:38:40 17 A. Yes.

04:38:42 18 Q. At the top of the page it says,

04:38:46 19 "Controllable parameter, finished sheet

04:38:46 20 solubles." And then under that it says, "Control

04:38:56 21 moves," followed by some text. The first item

04:39:02 22 says, "Adjust size prep nip loading pressure up

04:39:10 23 or down as necessary. Do not exceed pressure

04:39:12 24 range of 16 to 40 PSI without supervisor

04:39:16 25 approval."

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04:39:18 2 Does that describe the adjustment to
04:39:22 3 the valve that you were describing in your answer
04:39:24 4 a few minutes ago?

04:39:28 5 A. I don't actually know whether it's a
04:39:30 6 valve or a knob or how the adjustment is actually
04:39:34 7 made.

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04:39:38 8 Q. What -- I'm sorry.

04:39:38 9 A. I'm just generally aware there is
04:39:40 10 such an adjustment.

04:39:40 11 Q. Do you know what the size press nip
04:39:44 12 is?

04:39:50 13 A. It's -- the nip is the point between
04:39:50 14 the two rolls. That's my understanding of the
04:39:54 15 nip.

04:40:04 16 Q. Do you know why it says "Do not
04:40:08 17 exceed pressure range of 16 to 40 PSI"?

04:40:14 18 A. I would just generally imagine that
04:40:18 19 whenever you start varying pressure beyond design
04:40:20 20 of equipment, it presents safety hazards. That's
04:40:26 21 just my general opinion.

04:40:38 22 Q. I should represent just for clarity,
04:40:46 23 and I neglected to say this before, I believe
04:40:46 24 that this document, which I don't think is dated,
04:40:48 25 comes from your files, as reflected on the Philip

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04:40:50 2 Morris production records.

04:40:56 3 Does this look like the kind of
04:40:56 4 document that is likely in your files?

04:40:58 5 MR. MURPHY: Objection to form. You
04:41:00 6 can answer.

04:41:04 7 A. I believe such a document was in my
04:41:06 8 files. This was a portion of the document that
04:41:10 9 was in my files.

04:41:30 10 MR. KILLORY: Would you mark that,
04:41:32 11 please.

12 (Donaher Exhibit 13 for
13 identification, Test request form, production
14 quality and technical services.)

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04:42:02 15 Q. Ms. Donaher, could you take a look at
04:42:04 16 Exhibit Number 13, which has just been handed to
04:42:06 17 you by the court reporter. It is Bates stamped
04:42:10 18 PA 403582 through 583, and production numbers are
04:42:26 19 2024796208 through 6209, two-page document
04:42:28 20 entitled, "Test request form, production quality
04:42:30 21 and technical services."

04:42:34 22 Under "Initiator of test," Sonny
04:42:36 23 Clarke, James Best, Denise Donaher and Dave
04:42:44 24 Mertz. Have you had a chance to look at the
04:42:46 25 document?

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04:42:48 2 MR. MURPHY: Do you want the witness
04:42:48 3 to read the document?

04:42:50 4 MR. KILLORY: I don't think that's
04:42:50 5 necessary. Just to look at it.

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04:42:52 6 Q. Have you had a chance to at least
04:42:54 7 look at the document?

04:42:54 8 A. Yes.

04:42:58 9 Q. Do you recognize the document?

04:43:04 10 A. I recognize it as one I wrote, and it
04:43:06 11 never went anywhere.

04:43:16 12 Q. When you say "it never went
04:43:16 13 anywhere," what do you mean?

04:43:18 14 A. The test request wasn't signed. It
04:43:22 15 was a thought that some of these procedures might
04:43:34 16 help the operators do a better job, make it more
04:43:40 17 clear to them.

04:43:42 18 Q. The test was never effected?

04:43:46 19 A. It was never run, no.

20 (Donaher Exhibit 14 for
21 identification, test request form dated August
22 12, 1993.)

04:44:50 23 Q. Ms. Donaher, the document that's just
04:44:52 24 been handed to you as Exhibit Number 14 is Bates
04:44:58 25 stamped PA 538612, production number 2030053619.

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04:45:00 2 It's another test request form dated August 12,

04:45:06 3 1993, initiator of test, Denise Donaher. Do you

04:45:10 4 know whether this test was ever effected?

04:45:10 5 A. Yes, it was.

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04:45:12 6 Q. Could you describe what the test
04:45:14 7 entailed?

04:45:18 8 A. Exactly what the test request says;
04:45:22 9 that three hogs' heads of RL was produced at a
04:45:28 10 target of 53 percent finished sheet solubles to
04:45:30 11 be subjectively evaluated.

04:45:34 12 Q. Did you initiate this test at
04:45:36 13 anyone's direction?

04:45:52 14 A. I can't recall if there was any one
04:45:56 15 specific direction. There was some curiosity as
04:46:00 16 to what would happen in terms of subjectives.
04:46:00 17 And this was a good opportunity because it was in
04:46:06 18 the middle of the pad team trials and we had some
04:46:08 19 flexibility to do some testing more
04:46:08 20 conveniently.

04:46:12 21 Q. Why did the fact that it was in the
04:46:12 22 middle of the pad team trials give you more
04:46:16 23 flexibility to do more testing?

04:46:20 24 A. The operators were already in the
04:46:22 25 mode of once a day, that we were shooting for

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04:46:24 2 some specific targets and trying to control the
04:46:26 3 process to the best of their ability within a
04:46:28 4 small time frame.

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04:46:34 5 Q. You said there was some curiosity as
04:46:36 6 to what would happen in terms of subjectives.
04:46:40 7 Did you have any conversations with anyone on
04:46:42 8 that topic?

04:46:46 9 A. I think we've had general discussion
04:46:48 10 that it's frustrating for us when we throw
04:46:52 11 solubles down the drain. And there are times
04:46:56 12 when that happens, and in doing that we always
04:46:58 13 wonder, can we improve the economics of our
04:47:00 14 process by not having to throw them away.

04:47:08 15 And for those occasions, we wanted to
04:47:08 16 confirm or reconfirm what we had already heard,
04:47:12 17 that if you increase the solubles above what the
04:47:14 18 current spec limit was, it wouldn't taste very
04:47:18 19 good subjectively.

04:47:18 20 Q. And the then current spec limit up at
04:47:22 21 the upper end was what?

04:47:24 22 MR. MURPHY: Objection to form. You
04:47:26 23 can answer.

04:47:26 24 A. The upper spec limit for finished
04:47:28 25 sheet solubles is approximately 48 percent or 49

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04:47:32 2 percent.

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04:47:36 3 Q. How did you achieve the 53 percent --
04:47:38 4 did you achieve the 53 percent soluble level?

04:47:40 5 MR. MURPHY: Objection. We're going

04:47:42 6 back and forth between a test and a spec limit
04:47:46 7 for production of finished sheet solubles. Are
04:47:48 8 you talking now, again, about the test?
04:47:52 9 Q. That's right. The test where you
04:47:56 10 proposed to achieve a 53 percent soluble level.
04:47:56 11 Did you, in the test, achieve that 53 percent
04:48:00 12 soluble level for subjective evaluation?
04:48:04 13 A. I believe so, with some difficulty.
04:48:06 14 Q. What was the difficulty?
04:48:16 15 A. The tobacco will only absorb so much
04:48:20 16 size or -- no matter what you do, and the other
04:48:32 17 reason why it was convenient to do it during the
04:48:34 18 pad team test, and related to the difficulty, is
04:48:36 19 that the base web solubles, we were running them
04:48:40 20 on the higher side so that the base web was a
04:48:48 21 little bit higher solubles, and then you add the
04:48:48 22 size to that.
04:49:00 23 Q. The base web solubles that you were
04:49:02 24 running at that time had higher solubles, is that
04:49:04 25 what you said?

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04:49:10 2 A. They were higher than what could
04:49:14 3 normally be run. Running them high is
04:49:14 4 difficult.

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04:49:30 5 Q. To achieve that higher level did you
04:49:30 6 have to discard some of the base web?

04:49:30 7 MR. MURPHY: Objection to form. I

04:49:32 8 think that misstates and mischaracterizes her
04:49:34 9 testimony. But you can answer the question if
04:49:34 10 you understand what you are being asked.
04:49:40 11 A. Disposing of base web, I had nothing
04:49:44 12 to do with it.
04:49:46 13 Q. Where did you get the solubles to put
04:49:48 14 on the base web to achieve this test 53 percent
04:49:52 15 soluble level?
04:49:52 16 A. Solubles that were -- would normally
04:49:56 17 be in the process.
04:50:00 18 Q. Were they solubles that were then in
04:50:00 19 inventory?
04:50:02 20 A. Yes.
04:50:02 21 MR. MURPHY: Objection to form. What
04:50:06 22 do you mean by "then in inventory"?
04:50:08 23 MR. KILLORY: I think she answered
04:50:10 24 the question.
04:50:12 25 Q. Do you know if --

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04:50:14 2 MR. MURPHY: Did you understand the
04:50:16 3 question?
04:50:16 4 THE WITNESS: I understood it to mean
04:50:18 5 at the time of this test.
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04:50:20 6 Q. Did the finished sheet produced by
04:50:22 7 this test with the 53 percent solubles have a
04:50:26 8 greater nicotine content than typical RL finished

04:50:30 9 sheet?

04:50:32 10 A. I have no knowledge about nicotine

04:50:34 11 contents on this test material or regular RL.

04:50:40 12 Q. Was there any testing done to this

04:50:40 13 test 53 percent soluble material for nicotine or

04:50:44 14 alkaloid content?

04:50:46 15 A. Not to my knowledge.

04:50:52 16 Q. Did any of this test material end up

04:50:54 17 in RL product that was shipped to your

04:50:58 18 customers?

04:50:58 19 MR. MURPHY: Objection to form. You

04:51:00 20 can answer.

04:51:00 21 A. No.

04:51:02 22 Q. What did you do with it?

04:51:06 23 A. Three hogs' heads were made and sent

04:51:14 24 to R&D Semi-Works to be processed into

04:51:18 25 cigarettes, to be subjectively evaluated.

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04:51:20 2 Q. And do you know what happened in the

04:51:24 3 subjective evaluation?

04:51:28 4 A. I recall being told that the results

04:51:34 5 were unacceptable, the subjectives were negative

04:51:36 6 as compared to the normal RL product.

04:51:38 7 Q. Do you recall who told you that?

04:51:44 8 A. It may have been Jay Swain.

04:51:48 9 Q. Who is Jay Swain? What position does

04:51:50 10 Jay Swain hold?

04:51:52 11 MR. MURPHY: As of --
04:51:52 12 Q. As of the date he told you that the
04:51:54 13 subjectives were unacceptable.
04:52:00 14 A. He was a flavor scientist, or I don't
04:52:04 15 know what his title is, in R&D.
04:52:08 16 Q. The date of the test request form for
04:52:12 17 this test is August 12th, 1993. Do you know when
04:52:16 18 the testing occurred?
04:52:18 19 A. This testing?
04:52:20 20 Q. That's right. The 53 percent soluble
04:52:22 21 level testing.
04:52:28 22 A. This test request says it was
04:52:30 23 conducted on August the 20th. So I would imagine
04:52:34 24 it was on or around that time. But I don't know
04:52:36 25 the exact date.

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04:52:38 2 Q. To the best of your recollection,
04:52:40 3 that testing went off, occurred approximately at
04:52:46 4 the time proposed in this --
04:52:46 5 A. Could have been a week or two. But
04:52:48 6 no more than that.
04:52:54 7 MR. KILLORY: Could you mark that,
04:52:54 8 please.

9 (Donaher Exhibit 15 for
10 identification, document Bates stamped PA 403521
11 through PA 403527.)

04:53:34 12 Q. Ms. Donaher, the court reporter has
04:53:34 13 handed you a document that's been marked as
04:53:36 14 Donaher Exhibit 15. It's Bates stamped PA 403521
04:53:48 15 through PA 403527. The production number is
04:54:00 16 2024796056, concluding with 2024796062.

04:54:10 17 Take a look at the document, please.
04:54:10 18 You don't need to -- I'm not going to ask you
04:54:12 19 detailed questions about the contents, but I
04:54:16 20 would like you to familiarize yourself with it.

04:54:18 21 MR. MURPHY: I take that to mean she
04:54:20 22 does not need to read it with care?

04:54:20 23 Q. Don't read all the details. Just
04:54:24 24 familiarize yourself with it. I would point out
04:54:26 25 to you, by the way, that on the last page your

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04:54:30 2 name is mentioned.

04:55:34 3 MR. MURPHY: I just pointed out to
04:55:36 4 the witness that her name is also mentioned on
04:55:36 5 page 4.

04:55:44 6 MR. KILLORY: Yes. I hadn't noticed
04:55:56 7 it.

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04:55:58 8 Q. You have had a chance to look at the
04:56:02 9 document. The problem identified on the cover
04:56:04 10 is, and I quote, "Improve broke and pad feedback
04:56:08 11 to increase yield." Does this document relate to
04:56:12 12 the pad project that we've been discussing
04:56:16 13 earlier in your testimony?

04:56:16 14 MR. MURPHY: Objection to form. You
04:56:18 15 can answer.
04:56:20 16 A. I can't see any link between the
04:56:22 17 two.
04:56:26 18 Q. Do you recall seeing this document
04:56:28 19 before?
04:56:30 20 A. No, I don't.
04:56:34 21 Q. Who is Bucky Shope? S-H-O-P-E.
04:56:40 22 A. He's a production supervisor at Park
23 500.
04:56:44 24 Q. Did you say he or she?
04:56:46 25 A. He.

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04:56:50 2 Q. Do you recall any conversations with
04:56:54 3 anyone about this problem of improving the broke
04:56:58 4 and pad feedback to increase yield?
04:57:06 5 A. Not in regard to this specific
04:57:10 6 effort.
04:57:10 7 Q. How about more generally, apart from
04:57:12 8 this effort, the problem of improving broke and
04:57:16 9 pad feedback? Do you recall any conversations on
04:57:20 10 that subject?
04:57:20 11 MR. MURPHY: Objection to form.
04:57:26 12 A. I recall having some general
04:57:26 13 discussions.
04:57:30 14 Q. With whom would you have had those

04:57:32 15 discussions?

04:57:34 16 MR. MURPHY: Objection to form. You

04:57:36 17 can answer.

04:57:40 18 A. I don't know who.

04:57:42 19 Q. What was the nature of the problem?

04:57:46 20 MR. MURPHY: Objection to form. You

04:57:48 21 can answer the question.

04:57:58 22 A. I think the concern is that broke is

04:58:00 23 already -- the fibers have already been refined,

04:58:04 24 and by sending them back to the beginning of the

04:58:06 25 process, they're already so small that you are

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04:58:10 2 going to just lose them. That's the general

04:58:12 3 concern. And I believe was the main focus of

04:58:14 4 this effort.

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04:58:16 5 Q. On the second page of Exhibit 15,

04:58:22 6 which is actually labeled page 1, after the cover

04:58:22 7 page, under "Evidence of the problem," you see

04:58:32 8 item P 2, it says, "Evidence of the problem,

04:58:36 9 list/illustrate evidence that demonstrates

04:58:38 10 chronic nature of the problem and the size of

04:58:42 11 it."

04:58:44 12 Item 1 under that heading says, "No

04:58:48 13 accurate accounting system for broke taken to

04:58:50 14 dumpsters (waste)." Is it true there is no

04:58:56 15 accurate accounting for broke taken to dumpsters

04:58:58 16 at Park 500?

04:59:00 17 MR. MURPHY: Objection to form. You
04:59:04 18 can answer the question, if you know.
04:59:04 19 A. I don't know one way or the other.
04:59:08 20 Q. Do you have any knowledge on the
04:59:08 21 subject of accounting for discarded broke?
04:59:18 22 A. "Discarded broke" doesn't make sense
04:59:20 23 to me.
04:59:20 24 Q. Okay. Broke that is not recycled in
04:59:24 25 the process but taken to the dumpster. That's

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04:59:26 2 what I mean by "discarded broke."
04:59:32 3 A. I don't know. I don't know.
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04:59:44 4 Q. Number 4 in that same list on page 1,
04:59:50 5 it's the second page of Exhibit 15, item number
04:59:52 6 4, says, "Refine fibers being lost through the
04:59:54 7 wire." Do you know what that means?
05:00:08 8 A. I interpret it to mean that fiber
05:00:08 9 that has been refined a significant amount of
05:00:12 10 times going back through the process as broke,
05:00:18 11 would tend to be smaller and fall through the
05:00:20 12 wire.
05:00:20 13 Q. And the wire being referred to is
05:00:22 14 what?
05:00:24 15 A. Is a Fourdrinier.
05:00:26 16 Q. The Fourdrinier press?
05:00:30 17 A. The Fourdrinier.

05:00:30 18 Q. The Fourdrinier. The broke --
05:00:36 19 MR. MURPHY: I'm sorry, I don't
05:00:38 20 understand that.
05:00:40 21 MR. KILLORY: I had said "press," and
05:00:40 22 I think I was being corrected that Fourdrinier --
05:00:42 23 Q. You do not understand to have the
05:00:46 24 word "press" attached to the word "Fourdrinier";
25 is that correct?

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05:00:48 2 MR. MURPHY: It's not a press.
05:00:48 3 THE WITNESS: That's what I said.
05:00:50 4 MR. KILLORY: She was correcting my
05:00:52 5 use of the word "press," quite correctly.
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05:00:56 6 Q. Broke is base web that has broken
05:01:02 7 into pieces; is that correct?
05:01:08 8 MR. MURPHY: Objection to form. You
05:01:10 9 can answer the question if you understand it.
05:01:14 10 A. I would refer to broke as any
05:01:18 11 finished sheet or base web material that's put
05:01:20 12 back in the broke pulp.
05:01:22 13 Q. I see. So it can be either finished
05:01:24 14 sheet or base web?
05:01:26 15 A. That's correct.
05:01:28 16 Q. The broke that's put back in the
05:01:30 17 broke pulp, do you have any understanding as to
05:01:40 18 whether it's more finished sheet or more base
05:01:46 19 web?

05:01:46 20 MR. MURPHY: Objection to form. If
05:01:48 21 you know and understand the question, you can
05:01:50 22 answer it.
05:01:56 23 A. I don't know what the breakdown is.
05:02:00 24 Q. Item number 5 on that same list on
05:02:06 25 page PA 403522 says, "Fiber is being lost through

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05:02:10 2 the cleaning systems and stock prep." Do you
05:02:14 3 know what that refers to?
05:02:18 4 MR. MURPHY: Objection to form. I
05:02:20 5 take it that you're asking her for her knowledge
05:02:22 6 independent of this document.
05:02:24 7 MR. KILLORY: That's right.
05:02:24 8 MR. MURPHY: You can answer the
05:02:26 9 question.
05:02:28 10 A. If someone told me fiber is being
05:02:30 11 lost through the cleaning systems and stock prep,
05:02:32 12 I would take that to mean the fiber being removed
05:02:38 13 by the centrifuges in liquor cleanup and the bird
05:02:44 14 cleaner, being removed in the cleanup.

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05:02:46 15 Q. What are the bird cleaners?
05:02:52 16 A. They are the second stage of liquor
05:02:56 17 cleanup that removes dense, heavy material that's
05:03:00 18 contained in the liquor.
05:03:06 19 MR. KILLORY: One second, so we can
05:03:06 20 wrap up.

05:03:24 21 Could you mark that. We just have a
05:03:24 22 couple of minutes more, David, and we're
05:03:26 23 through.
24 (Donaher Exhibit 16 for
25 identification, memo on pad stationery of David

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2 Barfield.)

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05:03:58 3 Q. Ms. Donaher, the court reporter has
05:04:00 4 handed you a document that is marked -- I believe
05:04:04 5 it's Exhibit 16, is that correct? Exhibit 16 is
05:04:06 6 Bates stamped PA 614577, production number
05:04:18 7 2031106567, concluding with Bates stamp PA
8 614589, production number 2031106579.

05:04:28 9 On its face the document is a memo on
05:04:30 10 the stationery, the pad stationery of David
05:04:34 11 Barfield, and it outlines the procedure for
05:04:38 12 transferring liquor between lines 1 and 2 tote
05:04:40 13 bin and tanker. It says, "Please review then
05:04:46 14 train your number 2 operators and number 2
05:04:50 15 operator upgrades on how to perform safely and
05:04:52 16 correctly," underlined "safely" and underlined
05:04:54 17 "correctly."

05:04:54 18 "Document who was trained and when
05:05:00 19 and turn in to me by Tuesday morning, 5/29.
05:05:02 20 Don't forget the people from L-3. DLB." It's
05:05:06 21 dated 5/22/90.

05:05:06 22 Attached to it are a series of

05:05:10 23 handwritten, hand lettered pages. Have you ever
05:05:12 24 seen this document before, or any portions of
05:05:14 25 it?

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05:05:14 2 MR. MURPHY: Objection to form. The
05:05:16 3 document speaks for itself, and some of your
05:05:20 4 summary and characterization of it is
05:05:24 5 inaccurate. However, I will let the witness
05:05:30 6 answer the question with respect to whether she's
05:05:32 7 ever seen this document before.

05:05:36 8 A. No, I haven't.

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05:05:38 9 Q. Do you know whether liquor is
05:05:40 10 transferred between lines at the Park 500
05:05:44 11 facility?

05:05:46 12 A. I've heard of instances where it's
05:05:48 13 occurred.

05:05:50 14 Q. What types of instances?

05:05:54 15 A. The ones that I have some knowledge
05:05:58 16 about are when we have had known equipment
05:06:02 17 problems on one line that have prevented us from
05:06:04 18 making liquor or making SCEL or DNCEL to make
05:06:14 19 into size, and so to keep the line from shutting
05:06:18 20 down, then liquor -- if one line had excess
05:06:20 21 liquor or had enough liquor to keep running, a
05:06:22 22 certain amount might be transferred to another
05:06:24 23 line to prevent it from shutting down.

05:06:32 24 Q. So if one line has not enough liquor
05:06:36 25 but another line has enough that it can spare

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05:06:38 2 some, transfers have been made?

05:06:40 3 MR. MURPHY: Objection to form.

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05:06:42 4 Q. Is that correct?

05:06:42 5 MR. MURPHY: That completely
05:06:42 6 misstates and missummarizes her testimony. The
05:06:48 7 testimony speaks for itself. If you have a
05:06:48 8 specific question, put the question to the
05:06:50 9 witness.

05:06:52 10 Q. Other than equipment breakdown, are
05:06:56 11 there any other reasons why there would be low
05:06:58 12 liquor on a given line at Park 500?

05:07:04 13 MR. MURPHY: Objection to form. You
05:07:06 14 can answer the question.

05:07:08 15 A. We could be having process losses, a
05:07:12 16 valve could be open somewhere an operator forgot
05:07:16 17 about or didn't know about. That kind of thing
05:07:24 18 could go undetected for who knows how long.
05:07:30 19 Those are the main instances I can think of.

05:07:30 20 Q. Could low soluble levels in the
05:07:36 21 incoming raw materials be a reason for low liquor
05:07:36 22 inventory on a line?

05:07:38 23 MR. MURPHY: Objection to form. You
05:07:40 24 can answer the question.

05:07:44 25 A. Like I stated earlier, the solubles

1 Donaher - Highly Confidential - Trade Secret
05:07:46 2 level in the feedstock affects the liquor level.
05:07:50 3 So it's a contributing factor.
05:07:50 4 MR. KILLORY: I don't have any other
05:07:52 5 questions at this time, David.
05:07:54 6 MR. MURPHY: Okay. We are adjourned,
05:07:56 7 then.
05:07:58 8 THE VIDEO OPERATOR: We're going off
05:08:02 9 the record. The time on the screen is 5:08:02.
05:08:06 10 This ends the deposition and videotape number 3.
05:08:06 11 MR. MURPHY: I'm sorry, before we go
05:08:08 12 off the record with the reporter, I don't know
05:08:10 13 that we need the video for this, but I'm advised
05:08:12 14 by my Virginia colleague that it's a custom and
05:08:14 15 practice in Virginia to give the same instruction
05:08:16 16 to the witness that Mr. Nunley has given in prior
05:08:20 17 depositions, which is that a transcript will be
05:08:24 18 prepared of this deposition; under the Virginia
05:08:28 19 rules you have a right to review that transcript
05:08:32 20 carefully and to sign it before it becomes the
05:08:34 21 official record of this deposition.
05:08:36 22 You can waive that right. I would
05:08:38 23 advise you that you not waive that right and that
05:08:42 24 you avail yourself of your right to review your
05:08:44 25 deposition transcript and to sign it. Do you

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05:08:46 2 want to do that?
05:08:46 3 THE WITNESS: Yes.
05:08:48 4 MR. KILLORY: Could we just -- I'm
05:08:52 5 sure it's of no consequence. Is there a way we
05:08:54 6 can record the fact that there is something in
05:08:54 7 the transcript that's not on the video?
05:08:58 8 THE VIDEO OPERATOR: The tape is
05:08:58 9 running.
05:09:00 10 MR. KILLORY: That takes care of the
05:09:00 11 problem. There's no problem.
05:09:02 12 THE VIDEO OPERATOR: Now, this ends
05:09:04 13 the videotape. The time on the screen is
05:09:04 14 5:09:09. We're going off the record.
05:11:34 15 (Time noted: 5:09 p.m.)

16

17

18

DENISE R. DONAHER

19

20 Subscribed and sworn to before me
21 this ____ day of _____, 1995.

22

23

24

25

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2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, LEE A. BURSTEN, a Registered
8 Professional Reporter and Notary Public within
9 and for the State of New York, do hereby certify:

10 That DENISE R. DONAHER, the witness
11 whose deposition is hereinbefore set forth, was
12 duly sworn by me and that such deposition is a
13 true record of the testimony given by the
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action by
17 blood or marriage, and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this ____ day of _____, 1995.

21

22

23 _____
LEE A. BURSTEN, R.P.R.

24

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|----|---|-----|----|
| 2 | (Donaher Exhibit 1 for identification, | | |
| 3 | Nicotine transfer to smoke, | | |
| 4 | investigations of Brazilian cigarettes | | |
| 5 | and a review of some factors affecting | | |
| 6 | nicotine transfer to smoke.)..... | 66 | 11 |
| 7 | (Donaher Exhibit 2 for identification, | | |
| 8 | memorandum from S.E. Medak and T.L. | | |
| 9 | Skidmore to Mr. K.S. Burns, dated | | |
| 10 | August 27, 1984.)..... | 81 | 5 |
| 11 | (Donaher Exhibit 3 for identification, | | |
| 12 | ART stems.)..... | 142 | 12 |
| 13 | (Donaher Exhibit 4 for identification, | | |
| 14 | test request form.)..... | 146 | 25 |
| 15 | (Donaher Exhibit 5 for identification, | | |
| 16 | test request form with pages attached.).. | 151 | 7 |
| 17 | (Donaher Exhibit 6 for identification, | | |
| 18 | request form dated 3/16/92.)..... | 177 | 9 |
| 19 | (Donaher Exhibit 7 for identification, | | |
| 20 | Park 500 RL processing lab shift | | |
| 21 | technician T-3 training manual, first | | |
| 22 | edition 1994.)..... | 186 | 18 |
| 23 | (Donaher Exhibit 8 for identification, | | |
| 24 | The Paper Making Process Language, Park | | |
| 25 | 500 division of Philip Morris.)..... | 189 | 10 |

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| 1 | Donaher - Highly Confidential - Trade Secret | | |
| 2 | (Donaher Exhibit 9 for identification, | | |
| 3 | C&I closeout report.)..... | 193 | 23 |

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|----|---|-----|----|
| 4 | (Donaher Exhibit 10 for identification, | | |
| 5 | Broke refeed chart.)..... | 199 | 9 |
| 6 | (Donaher Exhibit 11 for identification, | | |
| 7 | Park 500 Inter-office correspondence | | |
| 8 | from D. Barfield, T. Bullock, B. Estes, | | |
| 9 | C. Spellmeyer.)..... | 206 | 23 |
| 10 | (Donaher Exhibit 12 for identification, | | |
| 11 | Q 500 Park 500 section 6, the line 1/2 | | |
| 12 | SPC system.)..... | 217 | 24 |
| 13 | (Donaher Exhibit 13 for identification, | | |
| 14 | Test request form, production quality | | |
| 15 | and technical services.)..... | 222 | 11 |
| 16 | (Donaher Exhibit 14 for identification, | | |
| 17 | test request form dated August 12, 1993 | | |
| 18 | .)..... | 223 | 19 |
| 19 | (Donaher Exhibit 15 for identification, | | |
| 20 | document Bates stamped PA 403521 | | |
| 21 | through PA 403527.)..... | 230 | 8 |
| 22 | (Donaher Exhibit 16 for identification, | | |
| 23 | memo on pad stationery of David | | |
| 24 | Barfield.)..... | 236 | 23 |
| 25 | | | |

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